



THE
FEDERAL STATUTES ANNOTATED

SUPPLEMENT, 1918

CONTAINING ALL THE LAWS OF A PERMANENT AND
GENERAL NATURE ENACTED BY THE SIXTY-
FOURTH AND SIXTY-FIFTH CONGRESS

BETWEEN JANUARY 1, 1916, AND JULY 18, 1918

WITH

SUPPLEMENTAL NOTES CONTINUING THE ANNOTATION
IN THE PRIOR VOLUMES

EDWARD THOMPSON COMPANY
NORTHPORT, LONG ISLAND, NEW YORK

1918

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EDWARD THOMPSON COMPANY

SUPPLEMENTAL NOTES CONTAINING THE ANNOTATION
IN THE PRIOR VOLUMES

COMPOSITION, PLATES, PRESSWORK, BINDING

BY

J. B. LYON COMPANY, ALBANY, N. Y.

EDWARD THOMPSON COMPANY
NORTHPORT, LONG ISLAND, NEW YORK

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PREFACE

The statutes collected in this Supplement connect, without break or duplication, with those contained in the 1916 Supplement to **FEDERAL STATUTES ANNOTATED**. They are the general, permanent, and public acts passed by Congress between Jan. 1, 1916, and July 18, 1918. As in the previous Supplements these acts are classified according to the scheme of titles in the main work, and in using this Supplement the reader should examine the corresponding title to locate the late, amendatory, or repealing legislation upon the topic under consideration. The usual tables of titles, Revised Statutes sections, and statutes chronologically arranged are included.

Part of the volume is devoted to the supplemental notes. These connect with the notes in the 1916 Supplement and annotate the acts found in the original work and Supplements thereto. The aim has been to present all the decisions construing any federal statute which have appeared since the editorial work on the earlier volumes was completed. The arrangement is by title, volume, page, and section as the statutes are found in preceding volumes, and the investigator has merely to turn to the corresponding title, volume, page, and section as shown by the captions in this Supplement to find the late cases. The omission of a title or of page and section captions implies that no new cases have been found.

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I. SEEDS, PLANTS AND NURSERY STOCK

[Seeds and grain — adulteration — prohibition of importation — unfit for seeding.] * * * For studying and testing commercial seeds, including the testing of samples of seeds of grasses, clover, or alfalfa, and lawn-grass seeds secured in the open market, and where such samples are found to be adulterated or misbranded the results of the tests shall be published, together with the names of the persons by whom the seeds were offered for sale, and for carrying out the provisions of the Act approved August twenty-fourth, nineteen hundred and twelve, entitled "An Act to regulate foreign commerce by prohibiting the admission into the United States of certain adulterated grain and seeds unfit for seeding purposes" (Thirty-seventh Statutes at Large, page five hundred and six), \$31,700:

and, hereafter, the provisions of said Act approved August twenty-fourth, nineteen hundred and twelve, shall be applied to seed of vetch and ryegrass; and, hereafter, when any kind or variety or mixture of the seeds subject to the provisions of said Act of August twenty-fourth, nineteen hundred and twelve, as hereby amended, shall contain less than sixty-five per centum of live pure seed as distinguished from dead seed, chaff, dirt, other seeds, or foreign matter, such seeds or mixtures thereof shall be deemed unfit for seeding purposes within the meaning of said Act approved August twenty-fourth, nineteen hundred and twelve, and the importation of such seed or mixture thereof is prohibited: *Provided, however,* That seed of Kentucky blue grass and seed of Canada blue grass shall not be considered unfit for seeding purposes when they contain fifty per centum or more of live pure seed. [39 Stat. L. 453.]

The foregoing and the following paragraph are from the Agricultural Appropriation Act of August 11, 1916, ch. 313.

For the Act of August 24, 1912, ch. 382, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 10; 1 Fed. Stat. Ann. (2d ed.) 229.

[Seeds, etc.—purchase and distribution—allotment to Congressmen.]

* * * For purchase, propagation, testing, and congressional distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; all necessary office fixtures and supplies, fuel, transportation, paper, twine, gum, postal cards, gas, electric current, rent outside of the District of Columbia, official traveling expenses, and all necessary material and repairs for putting up and distributing the same; for repairs and the employment of local and special agents, clerks, assistants, and other labor required, in the city of Washington and elsewhere, \$252,540. And the Secretary of Agriculture is hereby directed to expend the said sum, as nearly as practicable, in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned, and in which same are to be distributed as hereinafter stated, and such seeds so purchased shall include a variety of vegetable and flower seeds suitable for planting and culture in the various sections of the United States: *Provided,* That the Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the seeds, bulbs, shrubs, vines, cuttings, and plants, or ~~any part~~ thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants, shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster General may jointly determine: *Provided, however,* That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member

may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided, also,* That the seeds allotted to Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the tenth day of January: *Provided, also,* That any portion of the allotments to Senators, Representatives, and Delegates in Congress remaining uncalled for on the first day of April shall be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress and who have not before during the same season been supplied by the Department: *And provided, also,* That the Secretary shall report, as provided in this Act, the place, quantity, and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants. [39 Stat. L. 455.]

See the note to the preceding paragraph of the text.

[Distribution of seeds, etc.] * * * That the Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the seeds, bulbs, shrubs, vines, cuttings, and plants, or any part thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants, shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster General may jointly determine: *Provided, however,* That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided, also,* That the seeds allotted to Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the tenth day of January: *Provided, also,* That any portion of the allotments to Senators, Representatives, and Delegates in Congress remaining uncalled for on the first day of April shall be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress and who have not before during the same season been supplied by the department: *And provided, also,* That the Secretary shall

report, as provided in this Act, the place, quantity, and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants. [39 Stat. L. 1144.]

The foregoing and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

Provisions similar to those of this paragraph have appeared in the Agricultural Appropriation Acts for many years, and seem to relate to the particular year only.

[Interstate quarantine against plant disease or insect infestation — importation or transportation prohibited — hearings — former Act amended.] * * * That section eight of an Act entitled "An Act to regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes," approved August twentieth, nineteen hundred and twelve, be, and the same is hereby, amended so as to read as follows:

"SEC. 8. That the Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States; and the Secretary of Agriculture is directed to give notice of the establishment of such quarantine to common carriers doing business in or through such quarantined area, and shall publish in such newspapers in the quarantine area as he shall select notice of the establishment of quarantine. That no person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory, or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided. That it shall be unlawful to move, or allow to be moved, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from any quarantined State or Territory or District of the United States or quarantined portion thereof, into or through any other State or Territory or District, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. That it shall be the duty

of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined State or Territory or District of the United States, or quarantined portion thereof, into or through any other State or Territory or District; and the Secretary of Agriculture shall give notice of such rules and regulations as hereinbefore provided in this section for the notice of the establishment of quarantine: *Provided*, That before the Secretary of Agriculture shall promulgate his determination that it is necessary to quarantine any State, Territory, or District of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard, either in person or by attorney." [39 Stat. L. 1165.]

See the note to the preceding paragraph of the text.

For the Act of Aug. 20, 1912, ch. 308, § 8, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 8; 1 Fed. Stat. Ann. (2d ed.) 234.

II. STANDARD MEASURES AND GRADES

[SEC. 1.] [United States grain standards Act — definition — construction.] That this Part, to be known as the United States grain standards Act, be and is hereby enacted, to read and be effective hereafter as follows:

That this Act shall be known by the short title of the "United States grain standards Act." The word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations; the words "in interstate or foreign commerce," wherever used in this Act, mean, "from any State, Territory, or District to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District." When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [39 Stat. L. 482.]

The foregoing section 1 and the following sections 2-12, constitute "Part B" of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

SEC. 2. [Establishment of standards of quality and condition.] That the Secretary of Agriculture is hereby authorized to investigate the handling, grading, and transportation of grain and to fix and establish as soon

as may be after the enactment hereof standards of quality and condition for corn (maize), wheat, rye, oats, barley, flaxseed, and such other grains as in his judgment the usages of the trade may warrant and permit, and the Secretary of Agriculture shall have power to alter or modify such standards whenever the necessities of the trade may require. In promulgating the standards, or any alteration or modification of such standards, the Secretary shall specify the date or dates when the same shall become effective, and shall give public notice, not less than ninety days in advance of such date or dates, by such means as he deems proper. [39 Stat. L. 482.]

See the notes to the preceding section 1 of this Act.

SEC. 3. [Official grain standards.] That the standards so fixed and established shall be known as the official grain standards of the United States. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 4. [Official inspection of grain — grades] That whenever standards shall have been fixed and established under this Act for any grain no person thereafter shall ship or deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this Act and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standards of the United States: *Provided*, That any person may sell, offer for sale, or consign for sale, ship or deliver for shipment in interstate or foreign commerce any such grain by sample or by type, or under any name, description, or designation which is not false or misleading, and which name, description, or designation does not include in whole or in part the terms of any official grain standard of the United States: *Provided further*, That any such grain sold, offered for sale, or consigned for sale by grade may be shipped or delivered for shipment in interstate or foreign commerce without inspection at point of shipment by an inspector licensed under this Act, to or through any place at which an inspector licensed under this Act is located, subject to be inspected by a licensed inspector at the place to which shipped or at some convenient point through which shipped for inspection, which inspection shall be under such rules and regulations as the Secretary of Agriculture shall prescribe, and subject further to the right of appeal from such inspection, as provided in section six of this Act: *And provided further*, That any such grain sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards may, upon compliance with the rules and regulations prescribed by the Secretary of Agriculture, be shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under this Act to a place at which there is no such inspector, subject to the right of either party to the transaction to refer any dispute as to the grade of the grain to the Secretary of Agriculture, who may determine the true grade thereof. No person shall in any certificate or in any contract or agreement of sale or agreement to sell by grade, either oral or written, involving, or in any invoice or bill of lading or other

shipping document relating to, the shipment or delivery for shipment, in interstate or foreign commerce, of any grain for which standards shall have been fixed and established under this Act, describe, or in any way refer to, any of such grain as being of any grade other than a grade fixed therefor in the official grain standards of the United States. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 5. [Misrepresentation respecting grade of grain.] That no person, except as permitted in section four, shall represent that any grain shipped or delivered for shipment in interstate or foreign commerce is of a grade fixed in the official grain standards other than as shown by a certificate therefor issued in compliance with this Act; and the Secretary of Agriculture is authorized to cause examinations to be made of any grain for which standards shall have been fixed and established under this Act, and which has been certified to conform to any grade fixed therefor in such official grain standards, or which has been shipped or delivered for shipment in interstate or foreign commerce. Whenever, after opportunity for hearing is given to the owner or shipper of the grain involved, and to the inspector thereof if the same has been inspected, it is determined by the Secretary that any quantity of grain has been incorrectly certified to conform to a specified grade, or has been sold, offered for sale, or consigned for sale under any name, description, or designation which is false or misleading, he may publish his findings. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 6. [Appeal from official inspection and grading—findings as evidence.] That whenever standards shall have been fixed and established under this Act for any grain and any quantity of such grain sold, offered for sale, or consigned for sale, or which has been shipped, or delivered for shipment in interstate or foreign commerce shall have been inspected and a dispute arises as to whether the grade as determined by such inspection of any such grain in fact conforms to the standard of the specified grade, any interested party may, either with or without reinspection, appeal the question to the Secretary of Agriculture, and the Secretary of Agriculture is authorized to cause such investigation to be made and such tests to be applied as he may deem necessary and to determine the true grade: *Provided*, That any appeal from such inspection and grading to the Secretary of Agriculture shall be taken before the grain leaves the place where the inspection appealed from was made and before the identity of the grain has been lost, under such rules and regulations as the Secretary of Agriculture shall prescribe. Whenever an appeal shall be taken or a dispute referred to the Secretary of Agriculture under this Act, he shall charge and assess, and cause to be collected, a reasonable fee, in amount to be fixed by him, which fee, in case of an appeal, shall be refunded if the appeal is sustained. All such fees, not so refunded, shall be deposited and covered into the Treasury as miscellaneous receipts. The findings of the Secretary of Agriculture as to grade, signed by him or by such officer or officers, agent or agents, of the Department of Agriculture as he may designate, made after the parties in interest have had opportunity to be heard, shall be accepted

in the courts of the United States as prima facie evidence of the true grade of the grain determined by him at the time and place specified in the findings. [39 Stat. L. 484.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 7. [Licenses to inspect — reports.] The Secretary of Agriculture may issue a license to any person, upon presentation to him of satisfactory evidence that such person is competent, to inspect and grade grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, under this Act and the rules and regulations prescribed thereunder. No person authorized or employed by any State, county, city, town, board of trade, chamber of commerce, corporation, society, partnership, or association to inspect or grade grain shall certify, or otherwise state or indicate in writing, that any grain for shipment or delivery for shipment in interstate or foreign commerce, which has been inspected or graded by him, or by any person acting under his authority, is of one of the grades of the official grain standards of the United States, unless he holds an unsuspended and unrevoked license issued by the Secretary of Agriculture: *Provided*, That in any State which has, or which may hereafter have a State grain inspection department established by the laws of such State, the Secretary of Agriculture shall issue licenses to the persons duly authorized and employed to inspect and grade grain under the laws of such State. The Secretary of Agriculture may suspend or revoke any license issued by him under this Act whenever, after opportunity for hearing has been given to the licensee, the Secretary shall determine that such licensee is incompetent or has knowingly or carelessly graded grain improperly or by any other standard than is authorized under this Act, or has issued any false certificate of grade, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has violated any provision of this Act or of the rules and regulations made hereunder. Pending investigation the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing: *Provided further*, That no person licensed by the Secretary of Agriculture to inspect or grade grain or employed by him in carrying out any of the provisions of this Act shall, during the term of such license or employment, be interested, financially or otherwise, directly or indirectly, in any grain elevator or warehouse, or in the merchandising of grain, nor shall he be in the employment of any person or corporation owning or operating any grain elevator or warehouse.

The Secretary of Agriculture shall require every inspector licensed under this Act to keep complete and correct records of all grain graded and inspected by him, and to make reports to the Secretary of Agriculture, in such forms and at such times as he may require, showing the place of inspection, the date of inspection, the name of the elevator or warehouse, if any, to which the grain was delivered or from which it was shipped, the kind of grain, the quantity of each kind, the grade thereof, and such other information as the Secretary of Agriculture may deem necessary. The Secretary of Agriculture, on each first Tuesday in January and each first Tuesday in July of each year shall make publication of a summary of such facts as are ascertained, showing in as great detail as possible all the facts, including

a summary as to the amount and grade of grain delivered to the elevator or warehouse and the amount and grade of grain delivered from such elevator or warehouse, and the estimated amount received on sample or type by such elevator or warehouse, and the estimated amount delivered therefrom on sample or type. [39 Stat. L. 484.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 8. [Rules and regulations.] That the Secretary of Agriculture shall from time to time, make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 9. [Violations of Act — penalty.] That any person who shall knowingly violate any of the provisions of sections four or seven of this Act, or any inspector licensed under this Act who shall knowingly inspect or grade improperly any grain which has been shipped or delivered for shipment in interstate or foreign commerce, or shall knowingly give any false certificate of grade, or shall accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, and any person who shall improperly influence or attempt to improperly influence any such inspector in the performance of his duty, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or be imprisoned not more than one year, or both. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 10. [Interference with execution of official duties — penalty.] That every person who forcibly assaults, resists, impedes, or interferes with any officer or employee of the United States Department of Agriculture in the execution of any duties authorized to be performed by this Act or the rules and regulations made hereunder shall, upon conviction thereof, be fined not more than \$1,000, or be imprisoned not more than one year, or both. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 11. [Effect of invalidity of part of Act.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 12. [Appropriation.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$250,000, which shall be available until expended, for the expenses of carrying into effect the provisions of this Act, including such rent and the employment

of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

An Act To fix standards for Climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes.

[Act of Aug. 31, 1916, ch. 426, 39 Stat. L. 673.]

[SEC. 1.] [Standards for Climax baskets for fruits and vegetables.]

That standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively:

(a) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.

(b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

(c) The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used. [39 Stat. L. 673.]

SEC. 2. [Standard basket, etc., for small fruit, etc.] That the standard basket or other container for small fruits, berries, and vegetables shall be of the following capacities, namely, dry one-half pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry half pint shall contain sixteen and eight-tenths cubic inches.

(b) The dry pint shall contain thirty-three and six-tenths cubic inches.

(c) The dry quart shall contain sixty-seven and two-tenths cubic inches. [39 Stat. L. 673.]

SEC. 3. [Interstate shipments — failure to conform to Act — penalty — foreign shipments.] That it shall be unlawful to manufacture for shipment, or to sell for shipment, or to ship from any State or Territory of

the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, any Climax baskets or other containers for small fruits, berries, or vegetables, whether filled or unfilled, which do not conform to the provisions of this Act; and any person guilty of a wilful violation of any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding \$25: *Provided*, That nothing herein contained shall apply to the manufacture, sale, or shipment of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables when intended for export to foreign countries when such Climax baskets, baskets, or other containers for small fruits, berries, and vegetables accord with the specifications of the foreign purchasers or comply with the law of the country to which shipment is made or to be made. [39 Stat. L. 674.]

SEC. 4. [Examination of baskets, etc.—rules and regulations.] That the examination and test of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables, for the purpose of determining whether such baskets or other containers comply with the provisions of this Act, shall be made by the Department of Agriculture, and the Secretary of Agriculture shall establish and promulgate rules and regulations allowing such reasonable tolerances and variations as may be found necessary. [39 Stat. L. 674.]

SEC. 5. [Duty of district attorney to prosecute violators.] That it shall be the duty of each district attorney, to whom satisfactory evidence of any violation of the Act is presented, to cause appropriate proceedings to be commenced and prosecuted in the proper court of the United States for the enforcement of the penalties as in such case herein provided. [39 Stat. L. 674.]

SEC. 6. [Prosecution of dealer — guaranty from manufacturer, etc., affording protection.] That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such Climax baskets, baskets, or other containers, as defined in this Act, were purchased, to the effect that said Climax baskets, baskets, or other containers are correct within the meaning of this Act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of Climax baskets, baskets, or other containers to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this Act. [39 Stat. L. 674.]

SEC. 7. [When act becomes effective.] That this Act shall be in force and effect from and after the first day of November, nineteen hundred and seventecn. [39 Stat. L. 674.]

III. FEDERAL FARM LOANS

An Act To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes.

[Act of July 17, 1916, ch. 245, 39 Stat. L. 360.]

[Federal Farm Loan Act.]

[SEC. 1.] That the short title of this Act shall be "The Federal Farm Loan Act." Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created. *[39 Stat. L. 360.]*

Definitions.

SEC. 2. That whenever the term "first mortgage" is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby. The term "farm loan bonds" shall be held to include all bonds secured by collateral deposited with a farm loan registrar under the terms of this Act; they shall be distinguished by the addition of the words "Federal," or "joint stock," as the case may be. *[39 Stat. L. 360.]*

Federal Farm Loan Board.

SEC. 3. That there shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board.

Said Federal Farm Loan Board shall consist of five members, including the Secretary of the Treasury, who shall be a member and chairman ex officio, and four members to be appointed by the President of the United States, by and with the advice and consent of the Senate. Of the four members to be appointed by the President, not more than two shall be appointed from one political party, and all four of said members shall be citizens of the United States and shall devote their entire time to the business of the Federal Farm Loan Board; they shall receive an annual salary of \$10,000 payable monthly, together with actual necessary traveling expenses.

One of the members to be appointed by the President shall be designated by him to serve for two years, one for four years, one for six years, and one for eight years, and thereafter each member so appointed shall serve for a term of eight years, unless sooner removed for cause by the President. One of the members shall be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of said board. Each member of the Federal Farm Loan Board shall within fifteen days after notice of his appointment take and subscribe to the oath of office.

The first meeting of the Federal Farm Loan Board shall be held in Washington as soon as may be after the passage of this Act, at a date and place to be fixed by the Secretary of the Treasury.

No member of the Federal Farm Loan Board shall, during his continuance in office, be an officer or director of any other institution, association, or partnership engaged in banking, or in the business of making land mortgage loans or selling land mortgages. Before entering upon his duties as a member of the Federal Farm Loan Board each member shall certify under oath to the President that he is eligible under this section.

The President shall have the power, by and with the advice and consent of the Senate, to fill any vacancy occurring in the membership of the Federal Farm Loan Board; if such vacancy shall be filled during the recess of the Senate a commission shall be granted which shall expire at the end of the next session.

The Federal Farm Loan Board shall appoint a farm loan registrar in each land bank district to receive applications for issues of farm loan bonds and to perform such other services as are prescribed by this Act. It shall also appoint one or more land bank appraisers for each land bank district and as many land bank examiners as it shall deem necessary. Farm loan registrars, land bank appraisers, and land bank examiners appointed under this section shall be public officials and shall, during their continuance in office, have no connection with or interest in any other institution, association, or partnership engaged in banking or in the business of making land mortgage loans or selling land mortgages: *Provided*, That this limitation shall not apply to persons employed by the board temporarily to do special work.

The salaries and expenses of the Federal Farm Loan Board, and of farm loan registrars and examiners authorized under this section, shall be paid by the United States. Land bank appraisers shall receive such compensation as the Federal Farm Loan Board shall fix, and shall be paid by the Federal land banks and the joint stock land banks which they serve, in such proportion and in such manner as the Federal Farm Loan Board shall order.

The Federal Farm Loan Board shall be authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as it may deem necessary to conduct the business of said board. All salaries and fees authorized in this section and not otherwise provided for shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the Federal Farm Loan Board. All such attorneys, experts, assistants, clerks, laborers, and other employees, and all registrars, examiners, and appraisers shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

Every Federal land bank shall semiannually submit to the Federal Farm Loan Board a schedule showing the salaries or rates of compensation paid to its officers and employees.

The Federal Farm Loan Board shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress.

The Federal Farm Loan Board shall from time to time require examinations and reports of condition of all land banks established under the provisions of this Act and shall publish consolidated statements of the results thereof. It shall cause to be made appraisals of farm lands as provided by this Act, and shall prepare and publish amortization tables which shall be used by national farm loan associations and land banks organized under this Act.

The Federal Farm Loan Board shall prescribe a form for the statement of condition of national farm loan associations and land banks under its supervision, which shall be filled out quarterly by each such association or bank and transmitted to said board.

It shall be the duty of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this Act and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers' organizations; to prepare and distribute in the same manner circulars setting forth the principles and advantages of amortized farm loans and the protection afforded debtors under this Act, instructing farmers how to organize and conduct farm loan associations, and advising investors of the merits and advantages of farm loan bonds; and to disseminate in its discretion information for the further instruction of farmers regarding the methods and principles of cooperative credit and organization. Said board is hereby authorized to use a reasonable portion of the organization fund provided in section thirty-three of this Act for the objects specified in this paragraph, and is instructed to lay before the Congress at each session its recommendations for further appropriations to carry out said objects. [39 Stat. L. 360.]

For the Civil Service Act of Jan. 16, 1883, ch. 27, mentioned in this section, see 1 Fed. Stat. Ann. (1st ed.) 809; 2 Fed. Stat. Ann. (2d ed.) 155.

Federal Land Banks.

SEC. 4. That as soon as practicable the Federal Farm Loan Board shall divide the continental United States, excluding Alaska, into twelve districts, which shall be known as Federal land bank districts, and may be designated by number. Said districts shall be apportioned with due regard to the farm loan needs of the country, but no such district shall contain a fractional part of any State. The boundaries thereof may be readjusted from time to time in the discretion of said board.

The Federal Farm Loan Board shall establish in each Federal land bank district a Federal land bank, with its principal office located in such city within the district as said board shall designate. Each Federal land bank shall include in its title the name of the city in which it is located. Subject to the approval of the Federal Farm Loan Board, any Federal land bank may establish branches within the land bank district.

Each Federal land bank shall be temporarily managed by five directors appointed by the Federal Farm Loan Board. Said directors shall be citizens of the United States and residents of the district. They shall each give a surety bond, the premium on which shall be paid from the funds of the bank. They shall receive such compensation as the Federal Farm Loan Board shall fix. They shall choose from their number, by majority vote, a president, a vice president, a secretary and a treasurer. They are further

authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as they may deem necessary, and to fix their compensation, subject to the approval of the Federal Farm Loan Board.

Said temporary directors shall, under their hands, forthwith make an organization certificate, which shall specifically state:

First. The name assumed by such bank.

Second. The district within which its operations are to be carried on, and the particular city in which its principal office is to be located.

Third. The amount of capital stock and the number of shares into which the same is to be divided: *Provided*, That every Federal land bank organized under this Act shall by its articles of association permit an increase of its capital stock from time to time for the purpose of providing for the issue of shares to national farm loan associations and stockholders who may secure loans through agents of Federal land banks in accordance with the provisions of this Act.

Fourth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Act. The organization certificate shall be acknowledged before a judge or clerk of some court of record or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, transmitted to the Farm Loan Commissioner, who shall record and carefully preserve the same in his office, where it shall be at all times open to public inspection.

The Federal Farm Loan Board is authorized to direct such changes in or additions to any such organization certificate, not inconsistent with this Act, as it may deem necessary or expedient.

Upon duly making or filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power —

First. To adopt and use a corporate seal.

Second. To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third. To make contracts.

Fourth. To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, subject to the supervision and regulation of the Federal Farm Loan Board, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described.

After the subscriptions to stock in any Federal land bank by national farm loan associations, hereinafter authorized, shall have reached the sum of \$100,000, the officers and directors of said land bank shall be chosen as herein provided and shall, upon becoming duly qualified, take over the management of said land bank from the temporary officers selected under this section.

The board of directors of every Federal land bank shall be selected as hereinafter specified and shall consist of nine members, each holding office for three years. Six of said directors shall be known as local directors, and shall be chosen by and be representative of national farm loan associations; and the remaining three directors shall be known as district directors, and shall be appointed by the Federal Farm Loan Board and represent the public interest.

At least two months before each election the Farm Loan Commissioner shall notify each national farm loan association in writing that such election is to be held, giving the number of directors to be elected for its district, and requesting each association to nominate one candidate for each director to be elected. Within ten days of the receipt of such notice each association shall forward its nominations to said Farm Loan Commissioner. Said commissioner shall prepare a list of candidates for local directors consisting of the twenty persons securing the highest number of votes from national farm loan associations making such nominations.

At least one month before said election said Farm Loan Commissioner shall mail to each national farm loan association the list of candidates. The directors of each national farm loan association shall cast the vote of said association for as many candidates on said list as there are vacancies to be filled, and shall forward said vote to the Farm Loan Commissioner within ten days after said list of candidates is received by them. The candidates receiving the highest number of votes shall be elected as local directors. In case of a tie the Farm Loan Commissioner shall determine the choice.

The Federal Farm Loan Board shall designate one of the district directors to serve for three years and to act as chairman of the board of directors. It shall designate one of said directors to serve for a term of two years and one to serve for a term of one year. After the first appointments each district director shall be appointed for a term of three years.

At the first regular meeting of the board of directors of each Federal land bank it shall be the duty of the local directors to designate two of the local directors whose term of office shall expire in one year from the date of such meeting, two whose term of office shall expire in two years from said date, and two whose term of office shall expire in three years from said date. Thereafter every local director of a Federal land bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the board of directors shall be filled for the unexpired term in the manner provided for the original selection of such directors.

Directors of Federal land banks shall have been for at least two years residents of the district for which they are appointed or elected, and at least one district director shall be experienced in practical farming and actually engaged at the time of his appointment in farming operations within the district. No director of a Federal land bank shall, during his continuance in office, act as an officer, director, or employee of any other institution,

association, or partnership engaged in banking or in the business of making or selling land mortgage loans.

Directors of Federal land banks shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, to be paid by the respective Federal land banks. Any compensation that may be provided by boards of directors of Federal land banks for directors, officers, or employees shall be subject to the approval of the Federal Farm Loan Board. [39 Stat. L. 362.]

Capital Stock of Federal Land Banks.

SEC. 5. That every Federal land bank shall have, before beginning business, a subscribed capital of not less than \$750,000. The Federal Farm Loan Board is authorized to prescribe the times and conditions of the payment of subscriptions to capital stock, to reject any subscription in its discretion, and to require subscribers to furnish adequate security for the payment thereof.

The capital stock of each Federal land bank shall be divided into shares of \$5 each, and may be subscribed for and held by any individual, firm, or corporation, or by the Government of any State or of the United States.

Stock held by national farm loan associations shall not be transferred or hypothecated, and the certificates therefor shall so state.

Stock owned by the Government of the United States in Federal land banks shall receive no dividends, but all other stock shall share in dividend distributions without preference. Each national farm loan association and the Government of the United States shall be entitled to one vote for each share of stock held by it in deciding all questions at meetings of shareholders, and no other shareholder shall be permitted to vote. Stock owned by the United States shall be voted by the Farm Loan Commissioner, as directed by the Federal Farm Loan Board.

It shall be the duty of the Federal Farm Loan Board, as soon as practicable after the passage of this Act, to open books of subscription for the capital stock of a Federal land bank in each Federal land bank district. If within thirty days after the opening of said books any part of the minimum capitalization of \$750,000 herein prescribed for Federal land banks shall remain unsubscribed, it shall be the duty of the Secretary of the Treasury to subscribe the balance thereof on behalf of the United States, said subscription to be subject to call in whole or in part by the board of directors of said land bank upon thirty days' notice with the approval of the Federal Farm Loan Board; and the Secretary of the Treasury is hereby authorized and directed to take out shares corresponding to the unsubscribed balance as called, and to pay for the same out of any moneys in the Treasury not otherwise appropriated. Thereafter no stock shall be issued except as hereinafter provided.

After the subscriptions to capital stock by national farm loan associations shall amount to \$750,000 in any Federal land bank, said bank shall apply semiannually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original capital twenty-five per centum of all sums thereafter subscribed to capital stock until all such original capital stock is retired at par.

At least twenty-five per centum of that part of the capital of any Federal land bank for which stock is outstanding in the name of national farm loan associations shall be held in quick assets, and may consist of cash in the vaults of said land bank, or in deposits in member banks of the Federal reserve system, or in readily marketable securities which are approved under rules and regulations of the Federal Farm Loan Board: *Provided*, That not less than five per centum of such capital shall be invested in United States Government bonds. [39 Stat. L. 364.]

Government Depositories.

SEC. 6. That all Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositories of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositories of public money and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds. [39 Stat. L. 365.]

National Farm Loan Associations.

SEC. 7. That corporations, to be known as national farm loan associations, may be organized by persons desiring to borrow money on farm mortgage security under the terms of this Act. Such persons shall enter into articles of association which shall specify in general terms the object for which the association is formed and the territory within which its operations are to be carried on, and which may contain any other provision, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. Said articles shall be signed by the persons uniting to form the association, and a copy thereof shall be forwarded to the Federal land bank for the district, to be filed and preserved in its office.

Every national farm loan association shall elect, in the manner prescribed for the election of directors of national banking associations, a board of not less than five directors, who shall hold office for the same period as directors of national banking associations. It shall be the duty of said board of directors to choose in such manner as they may prefer a secretary-treasurer, who shall receive such compensation as said board of directors shall determine. The board of directors shall elect a president, a vice president, and a loan committee of three members.

The directors and all officers except the secretary-treasurer shall serve without compensation, unless the payment of salaries to them shall be approved by the Federal Farm Loan Board. All officers and directors

except the secretary-treasurer shall, during their term of office, be bona fide residents of the territory within which the association is authorized to do business, and shall be shareholders of the association.

It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this Act prescribed; and to meet all other obligations of the association, subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer, acting under the direction of the national farm loan association, to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association. He shall be the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association. He shall furnish a suitable surety bond to be prescribed and approved by the Federal Farm Loan Board for the proper performance of the duties imposed upon him under this Act, which shall cover prompt collection and transmission of funds. He shall make a quarterly report to the Federal Farm Loan Board upon forms to be provided for that purpose. Upon request from said board said secretary-treasurer shall furnish information regarding the condition of the national farm loan association for which he is acting, and he shall carry out all duly authorized orders of said board. He shall assure himself from time to time that the loans made through the national farm loan association of which he is an officer are applied to the purposes set forth in the application of the borrower as approved, and shall forthwith report to the land bank of the district any failure of any borrower to comply with the terms of his application or mortgage. He shall also ascertain and report to said bank the amount of any delinquent taxes on land mortgaged to said bank and the name of the delinquent.

The reasonable expenses of the secretary-treasurer, the loan committee, and other officers and agents of national farm loan associations, and the salary of the secretary-treasurer, shall be paid from the general funds of the association, and the board of directors is authorized to set aside such sums as it shall deem requisite for that purpose and for other expenses of said association. When no such funds are available, the board of directors may levy an assessment on members in proportion to the amount of stock held by each, which may be repaid as soon as funds are available, or it may secure an advance from the Federal land bank of the district, to be repaid with interest at the rate of six per centum per annum, from dividends belonging to said association. Said Federal land bank is hereby authorized to make such advance and to deduct such repayment.

Ten or more natural persons who are the owners, or about to become the owners, of farm land qualified as security for a mortgage loan under section twelve of this Act, may unite to form a national farm loan association. They shall organize subject to the requirements and the conditions specified in this section and in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors may consist of

five members only, and instead of a secretary and a treasurer there shall be a secretary-treasurer, who need not be a shareholder of the association.

When the articles of association are forwarded to the Federal land bank of the district as provided in this section, they shall be accompanied by the written report of the loan committee as required in section ten of this Act, and by an affidavit stating that each of the subscribers is the owner, or is about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan; that the loan desired by each person is not more than \$10,000, nor less than \$100, and that the aggregate of the desired loans is not less than \$20,000; that said affidavit is accompanied by a subscription to stock in the Federal land bank equal to five per centum of the aggregate sum desired on mortgage loans; and that a temporary organization of said association has been formed by the election of a board of directors, a loan committee, and a secretary-treasurer who subscribes to said affidavit, giving his residence and post office address.

Upon receipt of such articles of association, with the accompanying affidavit and stock subscription, the directors of said Federal land bank shall send an appraiser to investigate the solvency and character of the applicants and the value of their lands, and shall then determine whether in their judgment a charter should be granted to such association. They shall forward such articles of association and the accompanying affidavit to the Federal Farm Loan Board with their recommendation. If said recommendation is unfavorable, the charter shall be refused.

If said recommendation is favorable, the Federal Farm Loan Board shall thereupon grant a charter to the applicants therefor, designating the territory in which such association may make loans, and shall forward said charter to said applicants through said Federal land bank: *Provided*, That said Federal Farm Loan Board may for good cause shown in any case refuse to grant a charter.

Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive from the Federal land bank of the district sums to be loaned to its members under the terms and conditions of this Act.

Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of five per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued. The capital stock of a Federal land bank shall not be reduced to an amount less than five per centum of the principal of the outstanding farm loan bonds issued by it. [39 Stat. L. 365.]

Capital Stock of National Farm Loan Associations.

SEC. 8. That the shares in national farm loan associations shall be of the par value of \$5 each.

Every shareholder shall be entitled to one vote on each share of stock held by him at all elections of directors and in deciding all questions at meetings of shareholders: *Provided*, That the maximum number of votes which may be cast by any one shareholder shall be twenty.

No persons but borrowers on farm land mortgages shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to five per centum of the face of the desired loan, said subscription to be paid in cash upon granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each \$100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding.

Every national farm loan association formed under this Act shall by its articles of association provide for an increase of its capital stock from time to time for the purpose of securing additional loans for its members and providing for the issue of shares to borrowers in accordance with the provisions of this Act. Such increases shall be included in the quarterly reports to the Federal Farm Loan Board. [39 Stat. L. 367.]

National Farm Loan Associations.—Special Provisions.

SEC. 9. That any person whose application for membership is accepted by a national farm loan association shall be entitled to borrow money on farm land mortgage upon filing his application in accordance with section eight and otherwise complying with the terms of this Act whenever the Federal land bank of the district has funds available for that purpose, unless said land bank or the Federal Farm Loan Board shall, in its discretion, otherwise determine.

Any person desiring to secure a loan through a national farm loan association under the provisions of this Act may, at his option, borrow from the Federal land bank through such association the sum necessary to pay for shares of stock subscribed for by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments: *Provided, however*, That such addition to the loan shall not be permitted to increase said loan above the limitation imposed in subsection fifth of section twelve.

Subject to rules and regulations prescribed by the Federal Farm Loan Board, any national farm loan association shall be entitled to retain as a commission from each interest payment on any loan indorsed by it an amount to be determined by said board not to exceed one-eighth of one per centum semi-annually upon the unpaid principal of said loan, any amounts so retained as commissions to be deducted from dividends payable to such

farm loan association by the Federal land bank, and to make application to the land bank of the district for loans not exceeding in the aggregate one-fourth of its total stock holdings in said land bank. The Federal land banks shall have power to make such loans to associations applying therefor and to charge interest at a rate not exceeding six per centum per annum.

Shareholders of every national farm loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

After a charter has been granted to a national farm loan association, any natural person who is the owner, or about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan, and who desires to borrow on a mortgage of such farm land, may become a member of the association by a two-thirds vote of the directors upon subscribing for one share of the capital stock of such association for each \$100 of the face of his proposed loan or any major fractional part thereof. He shall at the same time file with the secretary-treasurer his application for a mortgage loan, giving the particulars required by section twelve of this Act. [39 Stat. L. 368.]

Appraisal.

SEC. 10. That whenever an application for a mortgage loan is made to a national farm loan association, it shall be first referred to the loan committee provided for in section seven of this Act. Said loan committee shall examine the land which is offered as security for the desired loan and shall make a detailed written report signed by all three members, giving the appraisal of said land as determined by them, and such other information as may be required by rules and regulations to be prescribed by the Federal Farm Loan Board. No loan shall be approved by the directors unless said loan committee agrees upon a favorable report.

The written report of said loan committee shall be submitted to the Federal land bank, together with the application for the loan, and the directors of said land bank shall examine said written report when they pass upon the loan application which it accompanies, but they shall not be bound by said appraisal.

Before any mortgage loan is made by any Federal land bank, or joint stock land bank, it shall refer the application and written report of the loan committee to one or more of the land bank appraisers appointed under the authority of section three of this Act, and such appraiser or appraisers shall investigate and make a written report upon the land offered as security for said loan. No such loan shall be made by said land bank unless said written report is favorable.

Forms for appraisal reports for farm loan associations and land banks shall be prescribed by the Federal Farm Loan Board.

Land bank appraisers shall make such examinations and appraisals and conduct such investigations, concerning farm loan bonds and first mortgages, as the Federal Farm Loan Board shall direct.

No borrower under this Act shall be eligible as an appraiser under this section, but borrowers may act as members of a loan committee in any case

where they are not personally interested in the loan under consideration. When any member of a loan committee or of a board of directors is interested, directly or indirectly, in a loan, a majority of the board of directors of any national farm loan association shall appoint a substitute to act in his place in passing upon such loan. [39 Stat. L. 369.]

Powers of National Farm Loan Associations.

SEC. 11. That every national farm loan association shall have power:

First. To indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal land bank of its district.

Second. To receive from the Federal land bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under section twelve of this Act.

Third. To acquire and dispose of such property, real or personal, as may be necessary or convenient for the transaction of its business.

Fourth. To issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal land bank of the district in the amount of \$25 or any multiple thereof. Such deposits, when received, shall be forthwith transmitted to said land bank, and be invested by it in the purchase of farm loan bonds issued by a Federal land bank or in first mortgages as defined by this Act. [39 Stat. L. 369.]

Restrictions on Loans Based on First Mortgages.

SEC. 12. That no Federal land bank organized under this Act shall make loans except upon the following terms and conditions:

First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.

Second. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding one per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: *Provided*, That after five years from the date upon which a loan is made additional payments in sums of \$25 or any multiple thereof for the reduction of the principal, or the payment of the entire principal, may be made on any regular installment date under the rules and regulations of the Federal Farm Loan Board: *And provided further*, That before the first issue of farm loan bonds by any land bank the interest rate on mortgages may be determined in the discretion of said land bank subject to the provisions and limitations of this Act.

Third. No loan on mortgage shall be made under this Act at a rate of interest exceeding six per centum per annum, exclusive of amortization payments.

Fourth. Such loans may be made for the following purposes and for no other:

(a) To provide for the purchase of land for agricultural uses.

(b) To provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; the term "equipment" to be defined by the Federal Farm Loan Board.

(c) To provide buildings and for the improvement of farm lands; the term "improvement" to be defined by the Federal Farm Loan Board.

(d) To liquidate indebtedness of the owner of the land mortgaged, existing at the time of the organization of the first national farm loan association established in or for the county in which the land mortgaged is situated, or indebtedness subsequently incurred for purposes mentioned in this section.

Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor.

A reappraisal may be permitted at any time in the discretion of the Federal land bank, and such additional loan may be granted as such reappraisal will warrant under the provisions of this paragraph. Whenever the amount of the loan applied for exceeds the amount that may be loaned under the appraisal as herein limited, such loan may be granted to the amount permitted under the terms of this paragraph without requiring a new application or appraisal.

Sixth. No such loan shall be made to any person who is not at the time, or shortly to become, engaged in the cultivation of the farm mortgaged. In case of the sale of the mortgaged land, the Federal land bank may permit said mortgage and the stock interests of the vendor to be assumed by the purchaser. In case of the death of the mortgagor, his heir or heirs, or his legal representative or representatives, shall have the option, within sixty days of such death, to assume the mortgage and stock interests of the deceased.

Seventh. The amount of loans to any one borrower shall in no case exceed a maximum of \$10,000, nor shall any loan be for a less sum than \$100.

Eighth. Every applicant for a loan under the terms of this Act shall make application on a form to be prescribed for that purpose by the Federal Farm Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required.

Ninth. Every borrower shall pay simple interest on defaulted payments at the rate of eight per centum per annum, and by express covenant in his mortgage deed shall undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the land mortgaged. Taxes, liens, judgments, or assessments not paid when due, and paid by the mortgagee shall become a part of the mortgage debt and shall bear simple interest at the rate of eight per centum per annum. Every borrower shall undertake to keep insured to the satisfaction of the Federal Farm Loan Board all buildings the value of which was a factor in determining the amount of the loan. Insurance shall be made payable to the

mortgagee as its interest may appear at time of loss, and, at the option of the mortgagor and subject to general regulations of the Federal Farm Loan Board, sums so received may be used to pay for reconstruction of the buildings destroyed.

Tenth. Every borrower who shall be granted a loan under the provisions of this Act shall enter into an agreement, in form and under conditions to be prescribed by the Federal Farm Loan Board, that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, or if the borrower shall be in default in respect to any condition or covenant of the mortgage, the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith: *Provided*, That the borrower may use part of said loan to pay for his stock in the farm loan association, and the land bank holding such mortgage may permit said loan to be used for any purpose specified in subsection fourth of this section.

Eleventh. That no loan or the mortgage securing the same shall be impaired or invalidated by reason of the exercise of any power by any Federal land bank or national farm loan association in excess of the powers herein granted or any limitations thereon.

Funds transmitted to farm loan associations by Federal land banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower. [39 Stat. L. 370.]

Powers of Federal Land Banks.

SEC. 13. That every Federal land bank shall have power, subject to the limitations and requirements of this Act —

First. To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act, to buy the same for its own account, and to retire the same at or before maturity.

Second. To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting.

Third. To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section twelve of this Act, and to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments and other sums payable under the terms, conditions, and covenants of the mortgages and of the bonds secured thereby.

Fourth. To acquire and dispose of —

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Federal Farm Loan Board in writing.

Fifth. To deposit its securities, and its current funds subject to check, with any member bank of the Federal Reserve System, and to receive interest on the same as may be agreed.

Sixth. To accept deposits of securities or of current funds from national farm loan associations holding its shares, but to pay no interest on such deposits.

Seventh. To borrow money, to give security therefor, and to pay interest thereon.

Eighth. To buy and sell United States bonds.

Ninth. To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in section twelve. [39 Stat. L. 372.]

Restrictions on Federal Land Banks.

SEC. 14. That no Federal land bank shall have power —

First. To accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized by the provisions of this Act.

Second. To loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen.

Third. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section twelve of this Act, and those taken as additional security for existing loans.

Fourth. To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any national farm loan association additional mortgages when the principal remaining unpaid upon mortgages already received from such association shall exceed twenty times the amount of its capital stock owned by such association.

Fifth. To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act. [39 Stat. L. 372.]

Agents of Federal Land Banks.

SEC. 15. That whenever, after this Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that national farm loan associations have not been formed, and are not likely to be formed, in any locality, because of peculiar local conditions, said board may, in its discretion, authorize Federal land banks to make loans on farm lands through agents approved by said board.

Such loans shall be subject to the same conditions and restrictions as if the same were made through national farm loan associations, and each borrower shall contribute five per centum of the amount of his loan to the capital of the Federal land bank, and shall become the owner of as much capital stock of the land bank as such contribution shall warrant.

No agent other than a duly incorporated bank, trust company, mortgage company, or savings institution, chartered by the State in which it has its principal office, shall be employed under the provisions of this section.

Federal land banks may pay to such agents the actual expense of appraising the land offered as security for a loan, examining and certifying the title thereof, and making, executing and recording the mortgage papers; and in addition may allow said agents not to exceed one-half of one per centum per annum upon the unpaid principal of said loan, such commission to be deducted from dividends payable to the borrower on his stock in the Federal land bank.

Actual expenses paid to agents under the provisions of this section shall be added to the face of the loan and paid off in amortization payments subject to the limitations provided in subsection ninth of section thirteen of this Act.

Said agents, when required by the Federal land banks, shall collect and forward to such banks without charge all interest and amortization payments on loans indorsed by them.

Any agent negotiating any such loans shall indorse the same and become liable for the payment thereof, and for any default by the mortgagor, on the same terms and under the same penalties as if the loan had been originally made by said agent as principal and sold by said agent to said land bank, but the aggregate of the unpaid principal of mortgage loans received from any such agent shall not exceed ten times its capital and surplus.

If at any time the district represented by any agent under the provisions of this section shall, in the judgment of the Federal Farm Loan Board, be adequately served by national farm loan associations, no further loans shall be negotiated therein by agents under this section. [39 Stat. L. 373.]

Joint Stock Land Banks.

SEC. 16. That corporations, to be known as joint stock land banks, for carrying on the business of lending on farm mortgage security and issuing farm land loans, may be formed by any number of natural persons not less than ten. They shall be organized subject to the requirements and under the conditions set forth in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors of every joint stock land bank shall consist of not less than five members.

Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable: *Provided, however*, That the Government of the United States shall not purchase or subscribe for any of the capital stock of any such bank; and each shareholder of any such bank shall have the same voting privileges as holders of shares in national banking associations.

No joint stock land bank shall have power to issue or obligate itself for outstanding farm loan bonds in excess of fifteen times the amount of its

capital and surplus, or to receive deposits or to transact any banking or other business not expressly authorized by the provisions of this Act.

No joint stock land bank shall be authorized to do business until capital stock to the amount of at least \$250,000 has been subscribed, one-half thereof paid in cash and the balance subject to call by the board of directors, and a charter has been issued to it by the Federal Farm Loan Board.

No joint stock land bank shall issue any bonds until after the capital stock is entirely paid up.

Farm loan bonds issued by joint stock land banks shall be so engraved as to be readily distinguished in form and color from farm loan bonds issued by Federal land banks, and shall otherwise bear such distinguishing marks as the Federal Farm Loan Board shall direct.

Joint stock land banks shall not be subject to the provisions of subsection (b) of section seventeen of this Act as to interest rates on mortgage loans or farm loan bonds, nor to the provisions of subsections first, fourth, sixth, seventh, and tenth of section twelve as to restrictions on mortgage loans: *Provided, however,* That no loans shall be made which are not secured by first mortgages on farm lands within the State in which such joint stock land bank has its principal office, or within some one State contiguous to such State. Such joint stock land banks shall be subject to all other restrictions on mortgage loans imposed on Federal land banks in section twelve of this Act.

Joint stock land banks shall in no case charge a rate of interest on farm loans exceeding by more than one per centum the rate of interest established for the last series of farm loan bonds issued by them.

Joint stock land banks shall in no case demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act.

Each joint stock land bank organized under this Act shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this Act. Such bonds shall be in form prescribed by the Federal Farm Loan Board, and it shall be stated in such bonds that such bank is organized under section sixteen of this Act, is under Federal supervision, and operates under the provisions of this Act. [39 Stat. L. 374.]

Powers of Federal Farm Loan Board.

SEC. 17. That the Federal Farm Loan Board shall have power —

(a) To organize and charter Federal land banks, and to charter national farm loan associations and joint stock land banks subject to the provisions of this Act, and in its discretion to authorize them to increase their capital stock.

(b) To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this Act, said rates to be uniform so far as practicable.

(c) To grant or refuse to Federal land banks, or joint stock land banks, authority to make any specific issue of farm loan bonds.

(d) To make rules and regulations respecting the charges made to borrowers on loans under this Act for expenses in appraisal, determination of title, and recording.

(e) To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this Act.

(f) To prescribe the form and terms of farm loan bonds, and the form, terms, and penal sums of all surety bonds required under this Act and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

(g) To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement.

(h) To suspend or to remove for cause any district director or any registrar, appraiser, examiner, or other official appointed by said board under authority of section three of this Act, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank.

(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act. [39 Stat. L. 375.]

Applications for Farm Loan Bonds.

SEC. 18. That any Federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this Act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of section twelve, section fifteen, or section sixteen of this Act, or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued. Said bank shall furnish with such mortgages a schedule containing a description thereof and such further information as may be prescribed by the Federal Farm Loan Board.

Upon receipt of such application said farm loan registrar shall verify said schedule and shall transmit said application and said schedule to the Federal Farm Loan Board, giving such further information pertaining thereto as he may possess. The Federal Farm Loan Board shall forthwith cause to be made such investigation and appraisal of the securities tendered as it shall deem wise, and it shall grant in whole or in part, or reject entirely, such application.

The Federal Farm Loan Board shall promptly transmit its decision as to any issue of farm loan bonds to the land bank applying for the same and to the farm loan registrar of the district. Said registrar shall furnish, in writing, such information regarding any issue of farm loan bonds as the Federal Farm Loan Board may at any time require.

No issue of farm loan bonds shall be authorized unless the Federal Farm Loan Board shall approve such issue in writing. [39 Stat. L. 375.]

Issue of Farm Loan Bonds.

SEC. 19. That whenever any farm loan registrar shall receive from the Federal Farm Loan Board notice that it has approved any issue of farm loan bonds under the provisions of section eighteen he shall forthwith take such steps as may be necessary, in accordance with the provisions of this Act, to insure the prompt execution of said bonds and the delivery of the same to the land bank applying therefor.

Whenever the Federal Farm Loan Board shall reject entirely any application for an issue of farm loan bonds, the first mortgages and bonds tendered to the farm loan registrar as collateral security therefor shall be forthwith returned to said land bank by him.

Whenever the Federal Farm Loan Board shall approve an issue of farm loan bonds, the farm loan registrar having the custody of the first mortgages and bonds tendered as collateral security for such issue of bonds shall retain in his custody those first mortgages and bonds which are to be held as collateral security, and shall return to the bank owning the same any of said mortgages and bonds which are not to be held by him as collateral security. The land bank which is to issue said farm loan bonds shall transfer to said registrar, by assignment, in trust, all first mortgages and bonds which are to be held by said registrar as collateral security, said assignment providing for the right of redemption at any time by payment as provided in this Act and reserving the right of substitution of other mortgages qualified under sections twelve, fifteen, and sixteen of this Act. Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds.

No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in said sections twelve, fifteen, and sixteen.

It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor. Such registrar may, in his discretion, temporarily accept, in place of mortgages withdrawn, United States Government bonds or cash.

The Federal Farm Loan Board may, at any time, call upon any land bank for additional security to protect the bonds issued by it. [39 Stat. L. 376.]

Form of Farm Loan Bonds.

SEC. 20. That bonds provided for in this Act shall be issued in denominations of \$25, \$50, \$100, \$500, and \$1,000; they shall run for specified minimum and maximum periods, subject to payment and retirement, at the option of the land bank, at any time after five years from the date of their issue. They shall have interest coupons attached, payable semiannually, and shall be issued in series of not less than \$50,000, the amount and terms to be fixed by the Federal Farm Loan Board. They shall bear a rate of interest not to exceed five per centum per annum.

The Federal Farm Loan Board shall prescribe rules and regulations

concerning the circumstances and manner in which farm loan bonds shall be paid and retired under the provisions of this Act.

Farm loan bonds shall be delivered through the registrar of the district to the bank applying for the same.

In order to furnish farm loan bonds for delivery at the Federal land banks and joint stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this Act, as the Federal Farm Loan Board may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Federal Farm Loan Board. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the Treasury not otherwise appropriated: *Provided, however,* That the Secretary shall be reimbursed for such expenditures by the Federal Farm Loan Board through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and reexchanged into coupon bonds, at the option of the holder, under rules and regulations to be prescribed by the Federal Farm Loan Board. [39 Stat. L. 377.]

Special Provisions of Farm Loan Bonds.

SEC. 21. That each land bank shall be bound in all respects by the acts of its officers in signing and issuing farm loan bonds, and by the acts of the Federal Farm Loan Board in authorizing their issue.

Every Federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons, for interest payments due upon any farm loan bonds issued by other Federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed: *Provided,* That such losses, if any, either of interest or of principal, shall be assessed by the Federal Farm Loan Board against solvent land banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding at the time of such assessment.

Every Federal land bank shall by appropriate action of its board of directors, duly recorded in its minutes, obligate itself to become liable on farm loan bonds as provided in this section.

Every farm loan bond issued by a Federal land bank shall be signed by its president and attested by its secretary, and shall contain in the face thereof a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or indorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal land banks are liable for the payment of each bond. [39 Stat. L. 377.]

Application of Amortization and Interest Payments.

SEC. 22. That whenever any Federal land bank, or joint stock land bank, shall receive any interest, amortization or other payments upon any first mortgage or bond pledged as collateral security for the issue of farm loan bonds, it shall forthwith notify the farm loan registrar of the items so received. Said registrar shall forthwith cause such payment to be duly credited upon the mortgage entitled to such credit. Whenever any such mortgage is paid in full, said registrar shall cause the same to be canceled and delivered to the proper land bank, which shall promptly satisfy and discharge the lien of record and transmit such canceled mortgage to the original maker thereof, or his heirs, administrators, executors, or assigns.

Upon written application by any Federal land bank, or joint stock land bank, to the farm loan registrar, it may be permitted, in the discretion of said registrar, to withdraw any mortgages or bonds pledged as collateral security under this Act, and to substitute therefor other similar mortgages or United States Government bonds not less in amount than the mortgages or bonds desired to be withdrawn.

Whenever any farm loan bonds, or coupons or interest payments of such bonds, are due under their terms, they shall be payable at the land bank by which they were issued, in gold or lawful money, and upon payment shall be duly canceled by said bank. At the discretion of the Federal Farm Loan Board, payment of any farm loan bond or coupon or interest payment may, however, be authorized to be made at any Federal land bank, any joint stock land bank, or any other bank, under rules and regulations to be prescribed by the Federal Farm Loan Board.

When any land bank shall surrender to the proper farm loan registrar any farm bonds of any series, canceled or uncanceled, said land bank shall be entitled to withdraw first mortgages and bonds pledged as collateral security for any of said series of farm loan bonds to an amount equal to the farm loan bonds so surrendered, and it shall be the duty of said registrar to permit and direct the delivery of such mortgages and bonds to such land bank.

Interest payments on hypothecated first mortgages shall be at the disposal of the land bank pledging the same, and shall be available for the payment of coupons and the interest of farm loan bonds as they become due.

Whenever any bond matures, or the interest on any registered bond is due, or the coupon on any coupon bond matures, and the same shall be presented for payment as provided in this Act, the full face value thereof shall be paid to the holder.

Amortization and other payments on the principal of first mortgages held by a farm loan registrar as collateral security for the issue of farm loan bonds shall constitute a trust fund in the hands of the Federal land bank or joint stock land bank receiving the same, and shall be applied or employed as follows:

In the case of a Federal land bank —

- (a) To pay off farm loan bonds issued by said bank as they mature.
- (b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.

(c) To loan on first mortgages on farm lands within the land bank district, qualified under this Act as collateral security for an issue of farm loan bonds.

(d) To purchase United States Government bonds.

In the case of a joint stock land bank—

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds.

(c) To loan on first mortgages qualified under section sixteen of this Act.

(d) To purchase United States Government bonds.

The farm loan bonds, first mortgages, United States Government bonds, or cash constituting the trust fund aforesaid, shall be forthwith deposited with the farm loan registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Every Federal land bank, or joint stock land bank, shall notify the farm loan registrar of the disposition of all payments made on the principal of mortgages held as collateral security for an issue of farm loan bonds, and said registrar is authorized, at his discretion, to order any of such payments, or the proceeds thereof, wherever deposited or however invested, to be immediately transferred to his account as trustee aforesaid. [39 Stat. L. 378.]

Reserves and Dividends of Land Banks.

SEC. 23. That every Federal land bank, and every joint stock land bank, shall semiannually carry to reserve account twenty-five per centum of its net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said land bank. Whenever said reserve shall have been impaired, said balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached the sum of twenty per centum of the outstanding capital stock, five per centum of the net earnings shall be annually added thereto. For the period of two years from the date when any default occurs in the payment of the interest, amortization installments, or principal on any first mortgage, by both mortgagor and indorser, the amount so defaulted shall be carried to a suspense account, and at the end of the two-year period specified, unless collected, shall be debited to reserve account.

After deducting the twenty-five per centum or the five per centum hereinbefore directed to be deducted for credit to reserve account, any Federal land bank or joint stock land bank may declare a dividend to shareholders of the whole or any part of the balance of its net earnings. The reserves of land banks shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board. [39 Stat. L. 379.]

Reserve and Dividends of National Farm Loan Associations.

SEC. 24. That every national farm loan association shall, out of its net earnings, semiannually carry to reserve account a sum not less than ten per centum of such net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said association

Whenever said reserve shall have been impaired, said credit balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached said sum of twenty per centum, two per centum of the net earnings shall be annually added thereto.

After deducting the ten per centum or the two per centum hereinbefore directed to be credited to reserve account, said association may, at its discretion, declare a dividend to shareholders of the whole or any part of the balance of said net earnings.

The reserves of farm loan associations shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board.

Whenever any farm loan association shall be voluntarily liquidated a sum equal to its reserve account as herein required shall be paid to and become the property of the Federal land bank in which such loan association may be a shareholder. [39 Stat. L. 379.]

Defaulted Loans.

SEC. 25. That if there shall be default under the terms of any indorsed first mortgage held by a Federal land bank under the provisions of this Act, the national farm loan association or agent through which said mortgage was received by said Federal land bank shall be notified of said default. Said association or agent may thereupon be required, within thirty days after such notice, to make good said default, either by payment of the amount unpaid thereon in cash, or by the substitution of an equal amount of farm loan bonds issued by said land bank, with all unmatured coupons attached. [39 Stat. L. 380.]

Exemption from Taxation.

SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed. [39 Stat. L. 380.]

Investment in Farm Loan Bonds.

SEC. 27. That farm loan bonds issued under the provisions of this Act by Federal land banks or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.

Any member bank of the Federal Reserve System may buy and sell farm loan bonds issued under the authority of this Act.

Any Federal reserve bank may buy and sell farm loan bonds issued under this Act to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under subsection (b) of section fourteen of the Federal Reserve Act approved December twenty-third, nineteen hundred and thirteen. [39 Stat. L. 380.]

For the Act of Dec. 23, 1913, ch. 6, § 14, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. (1st ed.) 274; 6 Fed. Stat. Ann. (2d ed.) 832.

Examinations.

SEC. 28. That the Federal Farm Loan Board shall appoint as many land bank examiners as in its judgment may be required to make careful examinations of the banks and associations permitted to do business under this Act.

Said examiners shall be subject to the same requirements, responsibilities and penalties as are applicable to national bank examiners under the national bank Act, the Federal Reserve Act and other provisions of law. Whenever directed by the Federal Farm Loan Board, said examiners shall examine the condition of any national farm loan association and report the same to the Farm Loan Commissioner. They shall examine and report the condition of every Federal land bank and joint stock land bank at least twice each year.

Said examiners shall receive salaries to be fixed by the Federal Farm Loan Board. [39 Stat. L. 381.]

Dissolution and Appointment of Receivers.

SEC. 29. That upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided*, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least \$150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of

such association, on such terms as the Federal Farm Loan Board or said court shall direct.

Such receivers shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received.

Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations.

If any national farm loan association shall be declared insolvent and a receiver shall be appointed therefor by the Federal Farm Loan Board, the stock held by it in the Federal land bank of its district shall be canceled without impairment of its liability and all payments on such stock, with accrued dividends, if any, since the date of the last dividend shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided*, That in estimating said debts contingent liabilities incurred by national farm loan associations under the provisions of this Act on account of default of principal or interest of indorsed mortgages shall be estimated and included as a debt, and said contingent liabilities shall be determined by agreement between the receiver and the Federal land bank of the district, subject to the approval of the Federal Farm Loan Board, and if said receiver and said land bank can not agree, then by the decision of the Farm Loan Commissioner, and the amount thus ascertained shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock. Whenever the capital stock of a Federal land bank shall be reduced, the board of directors shall cause to be executed a certificate to the Federal Farm Loan Board, showing such reduction of capital stock, and, if said reduction shall be due to the insolvency of a national farm loan association, the amount repaid to such association.

No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board. [39 Stat. L. 381.]

State Legislation.

SEC. 30. That it shall be the duty of the Farm Loan Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, and the foreclosure of mortgages or other instruments securing loans, as well as providing homestead and other exemptions and granting the power to waive such exemptions as respects first mortgages, are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages.

Pending the making of such examination in the case of any State, the Federal Farm Loan Board may declare first mortgages on farm lands situated within such State ineligible as the basis for an issue of farm loan bonds; and if said examination shall show that the laws of any such State afford insufficient protection to the holder of first mortgages of the kinds provided in this Act, said Federal Farm Loan Board may declare said first mortgages on land situated in such State ineligible during the continuance of the laws in question. In making his examination of the laws of the several States and forming his conclusions thereon said Farm Loan Commissioner may call upon the office of the Attorney General of the United States for any needed legal advice or assistance, or may employ special counsel in any State where he considers such action necessary.

At the request of the Executive of any State the Federal Farm Loan Board shall prepare a statement setting forth in what respects the requirements of said board can not be complied with under the existing laws of such State. [*39 Stat. L. 382.*]

Penalties.

SEC. 31. That any applicant for a loan under this Act who shall knowingly make any false statement in his application for such loan, and any member of a loan committee or any appraiser provided for in this Act who shall willfully overvalue any land offered as security for loans under this Act, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both. Any examiner appointed under this Act who shall accept a loan or gratuity from any land bank or national farm loan association examined by him, or from any person connected with any such bank or association in any capacity, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both, and may be fined a further sum equal to the money so loaned or gratuity given, and shall forever thereafter be disqualified from holding office as an examiner under the provisions of this Act. No examiner, while holding such office, shall perform any other service for compensation for any bank or banking or loan association, or for any person connected therewith in any capacity.

Any person who shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any bond, coupon, or paper in imitation of, or purporting to be in imitation of, the bonds or coupons issued by any land bank or national farm loan association, now or hereafter authorized and acting under the laws of the United States; or any person who shall pass, utter, or publish, or attempt to pass, utter, or publish any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by any such bank or association, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering any such bond, coupon, or paper, or shall pass, utter, or publish as true any falsely altered or spurious bond, coupon, or paper issued, or purporting to have been issued, by any such bank or association, knowing the same to be falsely altered or spurious, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Other than the usual salary or director's fee paid to any officer, director, or employee of a national farm loan association, a Federal land bank, or a joint stock land bank, and other than a reasonable fee paid by such association or bank to any officer, director, attorney, or employee for services rendered, no officer, director, attorney, or employee of an association or bank organized under this Act shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank. No land bank or national farm loan association organized under this Act shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized. No examiner, public or private, shall disclose the names of borrowers to other than the proper officers of a national farm loan association or land bank without first having obtained express permission in writing from the Farm Loan Commissioner or from the board of directors of such association or bank, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress or of either House duly authorized. Any person violating any provision of this paragraph shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding one year, or both.

Any person connected in any capacity with any national farm loan association, Federal land bank, or joint stock land bank, who embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or who without authority from the directors draws any order, assigns any note, bond, draft, mortgage, judgment, or decree thereof, or who makes any false entry in any book, report, or statement of such association or land bank with intent in either case to defraud such institution or any other company, body politic or corporate, or any individual person, or to deceive any officer of a national farm loan association or land bank or any agent appointed to examine into the affairs of any such association or bank, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Any person who shall deceive, defraud, or impose upon, or who shall attempt to deceive, defraud, or impose upon, any person, firm, or corporation by making any false pretense or representation regarding the character, issue, security, or terms of any farm loan bond, or coupon, issued under the terms of this Act; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act by one class of land banks is a farm loan bond, or coupon, issued by another class of banks; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act, or anything contained in said farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined not exceeding \$500 or imprisoned not exceeding one year, or both.

The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction, any person or persons violating any of the provisions of this section. [39 Stat. L. 382.]

Government Deposits.

SEC. 32. That the Secretary of the Treasury is authorized, in his discretion, upon the request of the Federal Farm Loan Board, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by farm loan bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of \$6,000,000 at any one time.

The Secretary of the Treasury is further authorized, in his discretion, upon the request of the Federal Farm Loan Board, from time to time during the fiscal years ending June thirtieth, nineteen hundred and eighteen, and June thirtieth, nineteen hundred and nineteen, respectively, to purchase at par and accrued interest with any funds in the Treasury not otherwise appropriated, from any Federal land bank, farm loan bonds issued by such bank.

Such purchases shall not exceed the sum of \$100,000,000 in either of such fiscal years. Any Federal land bank may at any time repurchase at par and accrued interest for the purpose of redemption or resale any bonds so purchased from it and held in the Treasury.

The bonds of any Federal land bank so purchased by the Secretary of the Treasury, and held in the Treasury under the provisions of this amendment one year after the termination of the pending war, shall upon thirty days' notice from the Secretary of the Treasury be redeemed or repurchased by such bank at par and accrued interest.

The temporary organization of any Federal land bank as provided in section four of said Federal Farm Loan Act shall be continued so long as any farm loan bonds purchased from it under the provisions of this amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by national farm loan associations shall equal the amount of stock held in such bank by the Government of the United States. [39 Stat. L. 384, as amended by — Stat. L.—.]

This section was amended to read as here given by the Act of Jan. 18, 1918, ch. —, § 1, the amendment consisting of the addition of the last four paragraphs relating to the purchase of bonds.

Section 2 of said amendatory Act was as follows:

"SEC. 2. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved."

Organization Expenses.

SEC. 33. That the sum of \$100,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Federal Farm Loan Board, for the purpose of carrying into effect the provisions of this Act, including the rent and equipment of necessary offices. [39 Stat. L. 384.]

Limitation of Court Decisions.

SEC. 34. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 384.]

Repealing Clause.

SEC. 35. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved. [39 Stat. L. 384.]

[SEC. 1.] [Federal Farm Loan Board — estimates for appropriations.]
 * * * hereafter detailed estimates for appropriations for the Federal Farm Loan Board shall be annually submitted to Congress. [39 Stat. L. 803.]

This is from the Deficiency Appropriation Act of Sept. 8, 1916, ch. 464.

IV. MISCELLANEOUS PROVISIONS

[Vehicles and motor boats for field work — report of expenditures.]

* * * That not to exceed \$60,000 of the lump-sum appropriations herein made for the Department of Agriculture shall be available for the purchase, maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles and motor boats necessary in the conduct of the field work of the Department of Agriculture outside the District of Columbia: *Provided*, That not to exceed \$10,000 of this amount shall be expended for the purchase of such vehicles and boats, and that such vehicles and boats shall be used only for official service outside the District of Columbia, but this shall not prevent the continued use for official service of motor trucks in the District of Columbia: *Provided further*, That the Secretary of Agriculture shall, on the first day of each regular session of Congress, make a report to Congress showing the amount expended under the provisions of this paragraph during the preceding fiscal year: *Provided*, That hereafter, nothing in this paragraph or in section five of the legislative, executive, and judicial appropriation Act, approved July sixteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page five hundred and eight), shall be construed to apply to the hire of motor-propelled and horse-drawn passenger-carrying vehicles and motor boats necessary in the conduct of the field work of the department, or to the maintenance, repair, or operation of vehicles so hired. [39 Stat. L. 491.]

This and the three paragraphs of the text following are from the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

For the Act of July 16, 1914, ch. 141, § 5, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 48; 3 Fed. Stat. Ann. (2d ed.) 155.

[Detailed estimates for executive officers, clerks, and employees below the grade of clerk.] The Secretary of Agriculture for the fiscal year nineteen hundred and eighteen, and annually thereafter, shall transmit to the Secretary of the Treasury for submission to Congress in the Book of Estimates detailed estimates for all executive officers, clerks, and employees below the grade of clerk, indicating the salary or compensation of each, necessary to be employed by the various bureaus, offices, and divisions of the Department of Agriculture, and shall include with such estimates a statement of all executive officers, clerks, and employees below the grade of clerk who may have been employed during the last completed fiscal year on any lump fund appropriation for the department and the salary or compensation of each. [39 Stat. L. 492.]

See the note to the preceding paragraph of this Act.

[Reports to Congress of investigations, etc.] * * * The Secretary of Agriculture is directed hereafter to submit to Congress annually a statement showing investigations and other services conducted by the Department of Agriculture which have been completed and which can be discontinued. [39 Stat. L. 492.]

See the note to the first paragraph of this Act, *supra*, p. 42.

[Detailed statement of expenditures — former act amended.] * * * That section two of the agricultural appropriation Act of March third, eighteen hundred and eighty-five (Twenty-third Statutes at Large, page three hundred and fifty-three), be, and the same hereby is, amended so as to read as follows, effective on and after June eighteenth, nineteen hundred and sixteen:

“SEC. 2. That hereafter in addition to the proper vouchers and accounts for the sums appropriated for the Department of Agriculture to be furnished to the accounting officers of the Treasury, the Secretary of Agriculture shall, at the commencement of each regular session, present to Congress a detailed statement of the expenditure of all appropriations for said department for the last preceding fiscal year.” [39 Stat. L. 492.]

See the note to the first paragraph of this Act, *supra*, p. 42.

For the Act of March 3, 1885, ch. 338, § 2, amended by the text, see 1 Fed. Stat. Ann. 7; 1 Fed. Stat. Ann. (2d ed.) 210.

[Photographic films — sale or rental.] * * * That the Secretary of Agriculture is authorized, under such rules and regulations and subject to such conditions as he may prescribe, to loan, rent, or sell copies of films: *Provided*, That in the sale or rental of films educational institutions or associations for agricultural education not organized for profit shall have preference; all moneys received from such rentals or sales to be covered into the Treasury of the United States as miscellaneous receipts. [39 Stat. L. 1157.]

This and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

[Passenger vehicles — exchange — report.] * * * That hereafter the Secretary of Agriculture may exchange motor-propelled and horse-drawn passenger-carrying vehicles in part payment for new motor-propelled or horse-drawn passenger-carrying vehicles authorized to be purchased by him, to be used for the same purposes as those proposed to be exchanged, and shall, on the first day of each regular session of Congress, make a report to Congress for the fiscal year last closed showing, as to each exchange hereunder, the make of the vehicle, the period of its use, the allowance therefor, and the vehicle, make thereof, and price, including exchange value, paid, or to be paid, for each vehicle procured through such exchange. *[39 Stat. L. 1167.]*

See the note to the preceding paragraph of the text.

An Act To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products.

[Act of Aug. 10, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Provisions for national security and defense — stimulating agriculture — facilitating distribution of agricultural products.] That for the purpose of more effectually providing for the national security and defense and carrying on the war with Germany by gathering authoritative information concerning the food supply, by increasing production, by preventing waste of the food supply, by regulating the distribution thereof, and by such other means and methods as are hereinafter provided, the powers, authorities, duties, obligations, and prohibitions hereinafter set forth are conferred and prescribed. *[— Stat. L. —.]*

Section 9 of this Act is given in *ANIMALS, post, p. 61.*

Section 10 of this Act is given in *PUBLIC LANDS, post.*

Section 11 of this Act is given in *WATERS, post.*

SEC. 2. [Authority of Secretary of Agriculture — investigation relative to production, etc., of food.] That the Secretary of Agriculture, with the approval of the President, is authorized to investigate and ascertain the demand for, the supply, consumption, costs, and prices of, and the basic facts relating to the ownership, production, transportation, manufacture, storage, and distribution of, foods, food materials, feeds, seeds, fertilizers, agricultural implements and machinery, and any article required in connection with the production, distribution, or utilization of food. It shall be the duty of any person, when requested by the Secretary of Agriculture, or any agent acting under his instructions, to answer correctly, to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of any matter authorized to be investigated under this section, or to produce all books, letters, papers, or documents in his possession, or under his control, relating to such matter. Any person who shall, within a reasonable time to be prescribed by the Secretary of Agriculture, not exceeding thirty days from the date of the receipt of the request, willfully

fail or refuse to answer such questions or to produce such books, letters, papers, or documents, or who shall willfully give any answer that is false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both. [— *Stat. L.* —.]

SEC. 3. [**Purchase, etc., of seeds.**] That whenever the Secretary of Agriculture shall find that there is or may be a special need in any restricted area for seeds suitable for the production of food or feed crops, he is authorized to purchase, or contract with persons to grow such seeds, to store them, and to furnish them to farmers for cash, at cost, including the expense of packing and transportation. [— *Stat. L.* —.]

SEC. 4. [**Co-operation with state and local authorities — rules and regulations.**] That the Secretary of Agriculture is authorized to cooperate with such State and local officials, and with such public and private agencies, or persons, as he finds necessary, and to make such rules and regulations as are necessary effectively to carry out the preceding sections of this Act. [— *Stat. L.* —.]

SEC. 5. [**Two additional Secretaries of Agriculture — salary.**] That the President, by and with the advice and consent of the Senate, may appoint two additional Assistant Secretaries of Agriculture, who shall perform such duties as may be required by law or prescribed by the Secretary of Agriculture, and who shall each be paid a salary of \$5,000 per annum. [— *Stat. L.* —.]

SEC. 6. [**Government agency in co-operation with Secretary of Agriculture.**] That the President is authorized to direct any agency or organization of the Government to cooperate with the Secretary of Agriculture in carrying out the purposes of this Act and to coordinate their activities so as to avoid any preventable loss or duplication of work. [— *Stat. L.* —.]

SEC. 7. [**Construction of words in Act.**] That words used in this Act shall be construed to import the plural or the singular as the case demands, and the word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. [— *Stat. L.* —.]

SEC. 8. [**Appropriations.**] That for the purposes of this Act, the following sums are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until June thirtieth, nineteen hundred and eighteen: For the prevention, control, and eradication of the diseases and pests of live stock; the enlargement of live-stock production; and the conservation and utilization of meat, poultry, dairy, and other animal products, \$885,000.

For procuring, storing, and furnishing seeds, as authorized by section three of this Act, \$2,500,000 and this fund may be used as a revolving fund until June thirtieth, nineteen hundred and eighteen.

For the prevention, control, and eradication of insects, and plant diseases injurious to agriculture, and the conservation and utilization of plant products. \$441,000.

For increasing food production and eliminating waste and promoting conservation of food by educational and demonstrational methods, through county, district, and urban agents and others, \$4,348,400.

For gathering authoritative information in connection with the demand for, and the production, supply, distribution, and utilization of food, and otherwise carrying out the purpose of section two of this Act; extending and enlarging the market news service; and preventing waste of food in storage, in transit, or held for sale; advise concerning the market movement or distribution of perishable products; for enabling the Secretary of Agriculture to investigate and certify to shippers the condition as to soundness of fruits, vegetables and other food products, when received at such important central markets as the Secretary of Agriculture may from time to time designate and under such rules and regulations as he may prescribe: *Provided*, That certificates issued by the authorized agents of the department shall be received in all courts as prima facie evidence of the truth of the statements therein contained; and otherwise carrying out the purposes of this Act, \$2,522,000: *Provided further*, That the Secretary of Agriculture shall, so far as practicable, engage the services of women for the work herein provided for.

For miscellaneous items, including the salaries of Assistant Secretaries appointed under this Act; special work in crop estimating; aiding agencies in the various States in supplying farm labor; enlarging the informational work of the Department of Agriculture; and printing and distributing emergency leaflets, posters, and other publications requiring quick issue or large editions, \$650,000.

Provided, That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen.

It shall be the duty of the Secretary of Agriculture to submit to Congress at its regular session in December of each year a detailed report of the expenditure of all moneys herein appropriated. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 44.

SEC. 12. [Period of effectiveness of Act.] That the provisions of this Act shall cease to be in effect when the national emergency resulting from the existing state of war shall have passed, the date of which shall be ascertained and proclaimed by the President; but the date when this Act shall cease to be in effect shall not be later than the beginning of the next fiscal year after the termination, as ascertained by the President, of the present war between the United States and Germany.

SEC. 27. [Nitrate of soda — procurement by President.] That the President is authorized to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increasing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same for cash at cost, including all expenses connected therewith. For carrying out the purposes

of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of \$10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of the nitrate of soda shall go into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

This is from an Act of Aug. 10, 1917, ch. —, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel." For the other provisions of this Act, see the title *FOOD AND FUEL*, *post*.

The Deficiencies Appropriation Act of March 28, 1918, ch. —, § 1, — *Stat. L.* —, contained a provision as follows:

"The proceeds heretofore or hereafter received from the disposition of nitrate of soda under the appropriation of \$10,000,000 contained in section twenty-seven of the Act approved August tenth, nineteen hundred and seventeen, shall be credited to the said appropriation of \$10,000,000 and be available for the purposes authorized in the said section during the period of the existing war as defined by section twenty-four of the said Act."

[*SEC. 1.*] * * * [**Protection of cotton culture — eradication of boll-worm.**] On account of the menace to cotton culture in the United States arising from the existence of the pink boll-worm in Mexico, the Secretary of Agriculture, in order to prevent the establishment and spread of such worm in Texas and other parts of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in cooperation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to cooperate with the Mexican Government or local Mexican authorities in the extermination of local infestations near the border of the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

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Joint Resolution Authorizing the Secretary of Commerce to sell skins taken from fur seals killed on the Pribilof Islands for food purposes.

[Res. of June 22, 1916, ch. 171, 39 Stat. L. 236.]

[Sealskins — sale by Secretary of Commerce.] That the Secretary of Commerce be, and he is hereby, authorized to sell all skins taken from seals killed on the Pribilof Islands for food purposes under section eleven of the Act of August twenty-fourth, nineteen hundred and twelve, in such market at such times and in such manner as he may deem most advantageous, and the proceeds of such sale or sales shall be paid into the Treasury of the United States. *[39 Stat. L. 236.]*

For the Act of Aug. 24, 1912, ch. 373, § 11, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 17; 1 Fed. Stat. Ann. (2d ed.) 349.

An Act To amend the United States homestead law in its application to Alaska, and for other purposes.

[Act of July 8, 1916, ch. 228, 39 Stat. L. 352.]

SECTION 1. [Homestead entry — area of claims.] That every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the District of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations of the Act approved March third, nineteen hundred and three, chapter one thousand and two, United States Statutes at Large, page one thousand and twenty-eight, be entitled to enter one hundred and sixty acres or a less quantity of unappropriated public land in said District of Alaska, and no more, and a former homestead entry in any other State or Territory shall not be a bar to a homestead entry in Alaska: *Provided*, That nothing herein contained shall be construed to limit or curtail the area of any homestead claim heretofore lawfully initiated. *[39 Stat. L. 352, as amended by — Stat. L. —.]*

For the Act of March 3, 1903, ch. 1002, mentioned in this section, see 10 Fed. Stat. Ann. 25; 1 Fed. Stat. Ann. (2d ed.) 325.

This Act was amended to read as here given by the Act of June 28, 1918, ch. —, entitled "An Act To amend the homestead law in its application to Alaska, and for other purposes." As originally enacted it was as follows:

"[**SEC. 1.**] [*Homestead entry — area of claim.*] That every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the District of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations of the Act approved March third, nineteen hundred and three, chapter one thousand and two, United States Statutes at Large, page one thousand and twenty-eight, be entitled to enter one hundred and sixty acres or a less quantity of unappropriated public land in said District of Alaska, and no more, and a former homestead entry in any other State or Territory shall not be a bar to a homestead entry in Alaska: *Provided*, That nothing herein contained shall be construed to limit or curtail the area of any homestead claim heretofore lawfully initiated. [*39 Stat. L. 352.*]

"**SEC. 2.** [*Lands excepted from homestead settlement.*] That there shall be excepted from homestead settlement and entry under this Act the lands in Annette and Pribiloff Islands, the islands leased or occupied for the propagation of foxes, and such other lands as have been or may be reserved or withdrawn from settlement or entry. [*39 Stat. L. 352.*]"

SEC. 2. [*Absence of system of public surveys — procedure.*] That if the system of public surveys has not been extended over the land included in a homestead entry, the entryman may, after due compliance with the terms of the homestead law in the matter of residence, cultivation, and improvement, submit to the register and receiver a showing as to such compliance, duly corroborated by two witnesses, and if such evidence satisfactorily shows that the homesteader is in a position to submit acceptable final proof the surveyor general of the Territory will be so advised and will, not later than the next succeeding surveying season, issue proper instructions for the survey of the land so entered, without expense to the entryman, who may thereafter submit final proof as in similar entries of surveyed lands. So far as practicable, such survey shall follow the general system of public-land surveys, and the entryman shall conform his boundaries thereto: *Provided*, That nothing herein shall prevent the homesteader from securing earlier action on his entry by a special survey at his own expense, if he so elects. [*— Stat. L. —.*]

SEC. 3. [*Lands excepted from homestead settlement.*] That there shall be excepted from homestead settlement and entry under this Act the lands in Annette and Pribilof Islands, the islands leased or occupied for the propagation of foxes, and such other lands as have been, or may be, reserved or withdrawn from settlement or entry. [*— Stat. L. —.*]

An Act To authorize the Legislature of Alaska to establish and maintain schools, and for other purposes.

[*Act of March 3, 1917, ch. 167, 39 Stat. L. 1131.*]

[**Schools — establishment — power of legislature.**] That the Legislature of Alaska is hereby empowered to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized

life in said Territory and to make appropriations of Territorial funds for that purpose; and all laws or parts of laws in conflict with this Act are to that extent repealed. [— *Stat. L.* —.]

[SEC. 1.] * * * [Government railroad — sale of lots — proceeds.]

That until June thirtieth, nineteen hundred and eighteen, not to exceed fifty per centum of the moneys received from the sale of lots or tracts within any town site or town sites heretofore or hereafter sold pursuant to the provisions of the Act of March twelfth, nineteen hundred and fourteen, entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," may, in the discretion of the Secretary of the Interior, be set apart and expended within the respective town sites in which such lots or tracts are sold, for the purpose of preparing the land for occupancy, the construction, installation, and maintenance of public utilities and improvements, and the construction of public school buildings, under such terms and conditions as the Secretary of the Interior may prescribe, and the moneys so set apart and designated are appropriated for the purpose of carrying these provisions into effect: *Provided*, That such moneys as may have been heretofore or may hereafter be expended for such purposes under and by authority of the Alaskan Engineering Commission from the funds at its disposal shall be reimbursed from the amount designated for the purposes herein provided: *Provided further*, That a report of the expenditures hereunder shall be made to Congress at the beginning of each regular session. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

For the Act of March 12, 1914, ch. 37, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 7; 1 Fed. Stat. Ann. (2d ed.) 336.

An Act To prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes.

[*Act of Feb. 14, 1917, ch. 53, 39 Stat. L. 903.*]

[SEC. 1.] [Intoxicating liquors — sale, etc., prohibited — definitions — penalties for violation.] That on and after the first day of January, anno Domini nineteen hundred and eighteen, it shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to manufacture, sell, give, or otherwise dispose of any intoxicating liquor or alcohol of any kind in the Territory of Alaska, or to have in his or its possession or to transport any intoxicating liquor or alcohol in the Territory of Alaska unless the same was procured and is so possessed and transported as hereinafter provided.

Whenever the term "liquor," "intoxicating liquor," or "intoxicating liquors" is used in this Act it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, cordials, hard or fermented cider, alcoholic bitters, ethyl alcohol, and all malt liquors, including all alcoholic compounds classed by the United States Internal Revenue Bureau as "compound liquors": *Provided*, That this Act shall not apply to methyl or wood alcohol.

That any person or persons, or any house, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, who shall, directly or indirectly, violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000 or shall be imprisoned for a period of not more than one year, or by both such fine and imprisonment. [39 Stat. L. 903.]

SEC. 2. [Pharmacists — permits — necessity.] That before a pharmacist shall be authorized to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding or preparing medicines, as provided by this Act, he shall procure a permit for that purpose from the judge of the district court in the division where the applicant resides. [39 Stat. L. 903.]

SEC. 3. [Pharmacists — permits — prerequisites to obtaining.] That to procure such permit a pharmacist shall make and file with the clerk of the said district court a statement in writing, under oath, stating that he desires to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding, preparing, or preserving medicines only, as provided by this Act, and giving his name, the location of his place of business, a statement that he is a licensed pharmacist, that he is regularly engaged in the practice of his profession at the location named, and that he will not violate the provisions of this Act. [39 Stat. L. 904.]

SEC. 4. [Pharmacists — permits — form.] That if the judge of the district court of any division in Alaska is satisfied of the good faith of the applicant he shall issue to such pharmacist a permit to transport pure alcohol for compounding, preparing, or preserving medicines or for scientific, artistic, or mechanical purposes. Such permit shall be substantially in the following form:

“ Permit to pharmacists to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes.

“ District court, _____ division, territory of Alaska, ss.

“ _____, a pharmacist, residing at _____, is hereby permitted to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes. This permit can only be used for one shipment and will be void after six months from the date of issue.

“ By order of the district court aforesaid.

“ Dated this _____ day of _____, nineteen hundred and _____.

“ _____,
“ Judge of the district court.”

[39 Stat. L. 904.]

SEC. 5. [Pharmacists — permits — issuance — record.] That said permit mentioned in section four hereof shall be issued upon forms supplied by the clerk of the district court and shall contain the permit, a copy of the application for permit, and a copy of the provisions of section six of this Act, and shall be issued under the seal of the said court and shall be void for transportation purposes after six months from the date of issuance.

The clerk of said district court shall keep in a separate book provided for that purpose a record of permits issued under this Act, wherein shall be entered the date and the number thereof, the person to whom issued, and the purpose for which issued. [39 Stat. L. 904.]

SEC. 6. [Pharmacists — permits — placing on packages, etc.— cancellation.] That said permit shall be attached to and remain affixed in a conspicuous place upon any package or parcel containing pure alcohol imported into or shipped in the Territory of Alaska, and when so affixed shall authorize any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise within the Territory of Alaska to transport, ship, or carry such pure alcohol. Any person so transporting such alcohol shall, before the delivery of such package or parcel, cancel said permit and so deface the same that it can not be used again. [39 Stat. L. 904.]

SEC. 7. [Shipments — regulations affecting — common carriers — consignees— fictitious names.] That all express companies, railroad companies, public or private carriers are hereby required to keep a separate book in which shall be entered, immediately upon receipt thereof, the name of the person to whom pure alcohol is shipped, from what city or town and State the same was shipped, and the name of the shipper, the amount and kind received, the date when received, the date when delivered, and to whom delivered, after which record there shall be a blank space in which the consignee shall be required to sign his own name, in ink, before such pure alcohol is delivered to such consignee, which book shall be open to the inspection of the public at any time during business hours of the company and shall not be removed from the place where the same is required to be kept. A copy of entries upon any such record herein provided to be kept, when certified to by the agent of any express or railroad company or any public or private carrier in charge of the same, shall constitute prima facie evidence of the facts therein stated in any court of the Territory.

It shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to ship alcohol or intoxicating liquor to a false or fictitious name or person, or any person to receive or receipt for alcohol or intoxicating liquor in a false or fictitious name. [39 Stat. L. 904.]

SEC. 8. [Shipments of wine for sacramental purposes — certificate.] That any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise may accept for transportation and may transport to any place within the Territory of Alaska shipments of wine for sacramental purposes when there is attached to such shipment a certificate in substantially the following form:

“ I (or we) certify that this package contains only _____ (amount) of _____ (wine), which has been ordered by _____ who represents himself to be a duly authorized and officiating priest or minister of the _____ church at _____, and that said wine is desired for sacramental purposes only.

“ _____.”

(Signature of Shipper.)

[39 Stat. L. 905.]

SEC. 9. [Shipments of wine for sacramental purposes — delivery — records.] That whenever a shipment of wines for sacramental purposes shall have been transported for delivery within the Territory of Alaska the delivering agent of the transportation company must refuse to deliver the same unless it is accompanied by the certificate prescribed in section eight of this Act, and then only to the person to whom the same is addressed or upon his written order. The transportation company must keep a record of all shipments and deliveries of wines for sacramental purposes and must preserve for a period of one year after their receipt all certificates accompanying such shipments and all written orders upon which deliveries may be made. Such records must be open to the inspection of the public at any time during office hours. [39 Stat. L. 905.]

SEC. 10. [Alcohol for scientific, etc., purposes — permit — procurement.] That any person who shall desire to purchase pure alcohol for scientific, artistic, or mechanical purposes shall apply to the district court aforesaid for a permit for that purpose. To procure such permit he shall make and file with the clerk of the district court a statement in writing, under oath, stating that he desires to purchase pure alcohol for scientific, artistic, or mechanical purposes as provided by this Act, and giving his name and residence and the place at which such pure alcohol is to be used. [39 Stat. L. 905.]

SEC. 11. [Alcohol for scientific, etc., purposes — permit — form.] That if the judge of said district court is satisfied of the good faith of the applicant, he shall issue to said applicant a permit to purchase a reasonable amount of pure alcohol for scientific, artistic, or mechanical purposes. The original of said permit shall have attached thereto a duplicate copy, and each shall be numbered with the same number and be in substantially the following form:

“ District Court, ——— Division, Territory of Alaska, ss.
 “ ———, residing at ———, is hereby permitted to purchase pure alcohol in the amount of ——— (here insert quantity), to be used for scientific, artistic, or mechanical purposes. This permit can only be used for one purchase, and the copy thereof attached hereto shall be conspicuously pasted upon the package containing said alcohol, and this permit to purchase shall be void after ninety days from the date hereof.

“ By order of the district court aforesaid.

“ Dated this ——— day of ———, nineteen hundred and ———.

“ ———,
 “ Judge of the District Court.”

[39 Stat. L. 905.]

SEC. 12. [Alcohol for scientific, etc., purposes — permit — effect — cancellation — copy on receptacle.] That the permit mentioned in section eleven shall authorize the applicant to purchase and any pharmacist to sell and deliver to him the quantity named in the said permit. The permit shall be canceled, kept, and retained on file for at least one year by the pharmacist so selling said pure alcohol, and the copy of said permit shall be, by the pharmacist, conspicuously pasted upon the receptacle containing said alco-

hol, and shall so remain upon said receptacle so long as the same shall contain alcohol. Said permit and copy shall only authorize one purchase and sale. It shall be unlawful for any pharmacist to sell pure alcohol without the permit herein specified, or for any person to keep or have in his possession any pure alcohol unless the receptacle containing the same shall be distinctly labeled with the copy of the permit authorizing the purchase of the same. [39 Stat. L. 906.]

SEC. 13. [Premises, vehicles, etc.— use for manufacture or transportation.] That it shall be unlawful for any person owning, leasing, or occupying or in possession or control of any premises, building, vehicle, car, or boat to knowingly permit thereon or therein the manufacture, transportation, disposal, or the keeping of intoxicating liquor with intent to manufacture, transport, or dispose of the same in violation of the provisions of this Act. [39 Stat. L. 906.]

SEC. 14. [Importing, etc., of liquors — prohibition.] That it shall be unlawful for any person to import, ship, sell, transport, deliver, receive, or have in his possession any intoxicating liquors, except as in this Act provided. [39 Stat. L. 906.]

SEC. 15. [Public drinking, intoxication, etc., as misdemeanor.] That any person who shall in or upon any passenger coach, street car, boat, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, or waiting room drink any intoxicating liquor of any kind, or any person who shall be drunk or intoxicated in any public or private road or street, or in any passenger coach, street car, or any public place or building, or at any public gathering, or any person who shall be drunk or intoxicated and shall disturb the peace of any person, shall be guilty of a misdemeanor. [39 Stat. L. 906.]

SEC. 16. [Social clubs — liability of members, etc.— competency of witnesses — keeping and giving away liquors.] That every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist, or abet in keeping or maintaining any clubhouse, or other place in which alcoholic liquor is received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatsoever, or who shall maintain what is commonly known as the "locker system" or other device for evading the provisions of this Act, and every person who shall use, barter, sell, give away, or assist or abet in bartering, selling, or giving away any liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject to the penalties prescribed in section one of this Act; and in all cases the members, shareholders, associates, or employees in any club or association mentioned in this section shall be competent witnesses to prove any violations of the provisions of this section of this Act, or of any fact tending thereto; and no person shall be excused from testifying as to any offense committed by another against any of the provisions of this Act by reason of his testimony tending to criminate himself, but the testimony given by such person shall in no case be used against him.

The keeping or giving away of alcoholic liquors, or any schemes or devices whatever, to evade the provisions of this Act, shall be deemed unlawful within the provisions of this Act. [39 Stat. L. 906.]

SEC. 17. [Information to district attorney — search warrants — issuance — articles seized as evidence.] That if one or more persons who are competent witnesses shall charge, on oath or affirmation, before the district attorney or any of his deputies duly authorized to act for him, presenting that any person, company, copartnership, association, club, or corporation has or have violated or is violating the provisions of this Act by manufacturing, storing, or depositing, offering for sale, keeping for sale or use, trafficking in, bartering, exchanging for goods, giving away, or otherwise furnishing alcoholic liquor, shall request said district attorney or any of his assistants duly authorized to act for him to cause to be issued a warrant, said attorney or any of his assistants shall cause to be issued such warrant, in which warrant the room, house, building, or other place in which the violation is alleged to have occurred or is occurring shall be specifically described; and said warrant shall be placed in the hands of the marshal, his deputy, or any town marshal or policeman in any town in which the room, house, building, or other place above referred to is located, commanding him to at once thoroughly search said described room, house, building, or other place, and the appurtenances thereof; and if any such be found, to take into his possession and safely keep, to be produced as evidence when required, all alcoholic liquors and all the means of dispensing the same, also all the paraphernalia or part of the paraphernalia of a barroom or other alcoholic liquor establishment, and any United States internal-revenue tax receipt or certificate for the manufacture or sale of alcoholic liquor, effective for the period of time covering the alleged offense, and forthwith report all the facts to the district attorney or his deputy, and such alcoholic liquor or the means for dispensing same, or the paraphernalia of a barroom or other alcoholic liquor establishment, or any United States internal-revenue tax receipt or certificate for the sale of alcoholic liquor, effective as aforesaid, shall be prima facie evidence of the violation of the provisions of this Act. [39 Stat. L. 906.]

SEC. 18. [Evidence — sufficiency to convict — warrants, etc. — specifying kind of liquor.] That it shall not be necessary, in order to convict any person, company, house, association, copartnership, club, or corporation, his, its, or their agents, officers, clerks, or servants of manufacturing, importing or selling alcoholic liquors, to prove the actual manufacture, importing, sale, delivery of, or payment for any alcoholic liquors, but the evidence of having or keeping them in hand, stored or deposited, taking orders for, or offering to sell or barter, or exchanging them for goods or merchandise, or giving them away, shall be sufficient to convict; nor shall it be necessary in a warrant, information, or indictment to specify the particular kind of alcoholic liquor which is made the subject of a charge of violation of this Act. [39 Stat. L. 907.]

SEC. 19. [Common and public nuisances — what are — abatement — punishment of persons maintaining.] That all houses, boats, boathouses, buildings, clubrooms and places of every description, including drug stores,

where alcoholic liquors are manufactured, stored, sold, or vended, given away, or furnished contrary to law, including those in which clubs, orders, or associations sell, barter, give away, distribute, or dispense intoxicating liquors to their members by any means or device whatever, as provided in this Act, shall be held, taken, and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others, in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties prescribed in section one of this Act, and judgment shall be given that such house, boat, building, or other place, or any room therein, be abated, or closed up as a place for the sale or keeping of such liquor contrary to law, as the court may determine. [39 Stat. L. 907.]

SEC. 20. [Common nuisances — abatement — injunction — bond — contempt.] That any United States District Attorney for the Territory of Alaska may maintain an action in equity in the name of the United States to abate and perpetually enjoin such a nuisance as defined in the preceding section. No bond shall be required. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not more than \$500 or by imprisonment in the Federal jail for not more than six months, or both such fine and imprisonment, in the discretion of the court. [39 Stat. L. 907.]

SEC. 21. [Common nuisances — conviction of tenant of premises — forfeiture of lease.] That if a tenant of a building or tenement is convicted of using such premises or any part thereof or maintaining a common nuisance, as hereinbefore defined, or of knowingly permitting such use by another, the conviction of such use shall render void the lease under which he holds and shall cause the right of possession to revert to the owner or lessor, who may, without process of law, make immediate entry upon the premises, or may avail himself of the remedy provided for the forcible detention thereof. [39 Stat. L. 907.]

SEC. 22. [Common nuisances — duty of owner, etc., of premises.] That anyone who knowingly permits any building owned or leased by him or under his control, or any part thereof, to be used in maintaining a common nuisance hereinbefore described in section nineteen of this Act, neglects to take all reasonable measures to eject therefrom the person so using the same, shall be deemed guilty of assisting in maintaining such nuisance. [39 Stat. L. 908.]

SEC. 23. [Property right in liquors — forfeiture — destruction.] That no property right of any kind shall exist in alcoholic liquors or beverages illegally manufactured, received, possessed, or stored under this Act, and in all such cases the liquors are forfeited to the United States and may be searched for and seized and ordered to be destroyed by the court after a conviction, when such liquors have been seized for use as evidence, or upon satisfactory evidence to the court presented by the district attorney that such liquors are contraband. [39 Stat. L. 908.]

SEC. 24. **[Violations of Act — punishment.]** That any person convicted of a violation of any of the provisions of this Act where the punishment therefor is not herein specifically provided shall be punished as provided by section one of this Act. [39 Stat. L. 908.]

SEC. 25. **[Pharmacists — conviction — revocation of license.]** That in case a pharmacist is convicted under the provisions of this Act the judge of the district court, in addition to the penalty provided in this Act, may, in his discretion, revoke his license to practice pharmacy, and thereafter he shall not receive a license for one year. [39 Stat. L. 908.]

SEC. 26. **[Internal revenue special tax stamp or receipt — use as evidence.]** That the issuance by the United States of any internal revenue special tax stamp or receipt to any person as a dealer in intoxicating liquors shall be prima facie evidence of the sale of intoxicating liquors by such person during the time the stamp or receipt is in force and effect.

A copy of such stamp or receipt or of the record of the issuance thereof, certified to by a United States internal-revenue officer having charge of such record, is admissible as evidence in like case and with like effect as the original stamp or receipt. [39 Stat. L. 908.]

SEC. 27. **[Enforcement of provisions — officers who must enforce.]** That it shall be the duty of the governor of Alaska, the United States marshals and their deputies, mayors, and members of town councils, town marshals, and police officers of all incorporated towns in Alaska, all Federal game wardens, agents of the Bureau of Fisheries and Forestry Service, customs collectors and their deputies, employees of the Bureau of Education, prosecuting attorneys and their deputies, and all other Federal and Territorial executive officers to enforce the provisions of this Act. [39 Stat. L. 908.]

SEC. 28. **[Prosecutions for violations — information — indictment — perjury.]** That prosecutions for violations of the provisions of this Act shall be on information filed by any such officer before any justice of the peace or district judge, or upon indictment by any grand jury of the Territory of Alaska, and said United States district attorney or his deputy shall file such information upon the presentation to him or his assistants of sworn information that the law has been violated; and in such prosecutions anyone making a false oath to any material fact shall be deemed guilty of perjury. [39 Stat. L. 908.]

SEC. 29. **[Importations of liquors by water — misdemeanor.]** That any person, company, or corporation who shall import or carry liquors into or upon the Territorial waters of Alaska in or upon any steamship, steamboat, vessel, boat, or other water craft, or shall permit the same to be so imported or carried into or upon said waters, except under the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one of this Act. [39 Stat. L. 908.]

SEC. 30. **[Liquor licenses — issuance.]** That in addition to the power now exercised the judges of the district courts of Alaska may grant liquor

licenses for any period of time less than one year upon a pro rata of the license fee for one year, but not to extend beyond the first day of January, nineteen hundred and eighteen, under the provisions of law now in force there so far as the same are applicable. [39 Stat. L. 909.]

SEC. 31. [Additional legislation in aid of enforcement.] That the Legislature of the Territory of Alaska may pass additional legislation in aid of the enforcement of this Act not inconsistent with its provisions. [39 Stat. L. 909.]

SEC. 32. [Rules of construction.] That in the interpretation of this Act words of the singular number shall be deemed to include their plurals, and words of the masculine gender shall be deemed to include the feminine, as the case may be. [39 Stat. L. 909.]

SEC. 33. [Taking effect of act — repeal of inconsistent laws.] That this Act shall be in full force and effect on and after the first day of January, nineteen hundred and eighteen, and all laws and parts of laws inconsistent herewith be, and they are hereby, repealed as of that date. [39 Stat. L. 909.]

[Military and post roads — construction — estimates.] * * * That hereafter, so long as the construction and maintenance of "Military and Post" Roads in Alaska, and of other roads, bridges, and trails in that Territory shall remain under the direction of the Secretary of War, he be authorized to submit such estimates for the consideration of Congress as are in his judgment necessary for a proper prosecution of the work. [— Stat. L. —.]

This is from the Army Appropriation Act of July 9, 1918, ch. —.

ALIEN PROPERTY CUSTODIAN

See TRADING WITH THE ENEMY.

ALIENS

Act of April 16, 1918, ch. —, 60.

Removal of Alien Enemies—R. S. sec. 4067 amended, 60.

CROSS-REFERENCES

See also *IMMIGRATION; NATURALIZATION; TRADING WITH THE ENEMY.*

An Act To amend section four thousand and sixty-seven of the Revised Statutes by extending its scope to include women.

[Act of April 16, 1918, ch. —, — Stat. L. —.]

[Removal of alien enemies — R. S. sec. 4067 amended.] That section four thousand and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

“SEC. 4067. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.” *[— Stat. L. —.]*

For R. S. sec. 4067 before this amendment, see 1 Fed. Stat. Ann. (2d ed.) 364; 1 Fed. Stat. Ann. 435.

ANIMALS

Act of March 4, 1917, ch. 179, 61.

Foot and Mouth and Other Contagious Diseases — Eradication, 61.

Act of Aug. 10, 1917, ch. —, 61.

Sec. 9. Tick-Infested Cattle — Admission for Immediate Slaughter, 61.

[Foot and mouth and other contagious diseases — eradication.] * * *

In case of an emergency arising out of the existence of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or other contagious or infectious disease of animals which, in the opinion of the Secretary of Agriculture, threatens the live-stock industry of the country, he may expend in the city of Washington or elsewhere, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000,000, which sum is hereby appropriated, or so much thereof as he determines to be necessary, in the arrest and eradication of any such disease, including the payment of claims growing out of past and future purchases and destruction, in cooperation with the States, of animals affected by or exposed to, or of materials contaminated by or exposed to, any such disease, wherever found and irrespective of ownership, under like or substantially similar circumstances, when such owner has complied with all lawful quarantine regulations: *Provided*, That the payment for animals hereafter purchased may be made on appraisement based on the meat, dairy, or breeding value, but in case of appraisement based on breeding value no appraisement of any animal shall exceed three times its meat or dairy value, and except in case of an extraordinary emergency, to be determined by the Secretary of Agriculture, the payment by the United States Government for any animal shall not exceed one-half of any such appraisements: [*39 Stat. L. 1167.*]

This is from the Agricultural Appropriations Act of March 4, 1917, ch. 179.

For former provisions on this subject, see the Act of Feb. 2, 1903, ch. 349, given in 1 Fed. Stat. Ann. (2d ed.) 411.

SEC. 9. [Tick-infested cattle — admission for immediate slaughter.] That the Act of August thirtieth, eighteen hundred and ninety, entitled "An Act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes" (Twenty-sixth Statutes at Large, page four hundred and fourteen), is hereby amended so as to authorize the Secretary of Agriculture, within his discretion and under such joint regulations as may be prescribed by the Secretary of Agriculture and the Secretary of the Treasury to permit the admission for immediate slaughter at ports of entry of tick-infested cattle which are otherwise free from disease and which have not been exposed to the infection of any other disease within sixty days next before their exportation from Mexico, South and Central America the islands of the Gulf of Mexico and the Caribbean Sea into those parts of the United States below

the southern cattle quarantine line at such ports of entry as may be designated by said joint regulations and also subject to the provisions of sections seven, eight, nine, and ten of said Act of August thirtieth, eighteen hundred and ninety: *Provided*, That the importation of tick-infested cattle from any country referred to in this section in which foot-and-mouth disease exists, which existence shall be determined by the Secretary of Agriculture, is prohibited: *Provided further*, That all cattle imported under the provisions of this section shall be slaughtered in accordance with the provisions of the Act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and seventy-four), commonly called the meat inspection amendment, and the rules and regulations promulgated thereunder by the Secretary of Agriculture, and that their hides shall be disposed of under rules and regulations to be prescribed by the Secretary of Agriculture. [— *Stat. L.* —.]

The foregoing section 9 is a part of an Act of Aug. 10, 1917, ch. —, entitled "An Act to provide further for the national security and defense, by stimulating agriculture and facilitating the distribution of agricultural products." The entire Act is set out or referred to in AGRICULTURE, *ante*, p. 44, and section 12, given in AGRICULTURE, *ante*, p. 46, is applicable to this section and should be read in connection with it.

For the Act of Aug. 30, 1890, ch. 839, mentioned in the text, see 1 Fed. Stat. Ann. 442; 1 Fed. Stat. Ann. (2d ed.) 374.

The Act of June 30, 1906, ch. 3913, mentioned in the text was superseded by the similar provisions of the Act of March 4, 1907, ch. 2907, given in 1909 Supp. Fed. Stat. Ann. 46; 1 Fed. Stat. Ann. (2d ed.) 397.

ANTI-TRUST ACTS

See TRADE COMBINATIONS AND TRUSTS

ARID LANDS

See WATERS

ARMY

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

ARTICLES OF WAR

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

ASYLUMS

See HOSPITALS AND ASYLUMS.

AVIATION

Act of Oct. 1, 1917, ch. —, 63.

Sec. 1. Aircraft Board — Creation, 63.

2. Membership of Board, 63.

3. Term of Office — Compensation, 64.

4. Powers and Duties, 64.

5. Clerks and Other Employees — Offices — Expenses, 64.

Act of Aug. 29, 1916, ch. 418, 65.

Sec. 1. Acceptance of Land for Sites — Acquirement of Land for Sites, 65.

Act of March 4, 1917, ch. 180, 65.

Aircraft — Purchase of Patent — Effect of Litigation Involving Validity of Patent, 65.

Act of July 27, 1917, ch. —, 65.

Aviation Stations — Site — North Island, California, 65.

Act of Oct. 6, 1917, ch. —, 66.

Aviation Station — Site — New Jersey, 66.

Act of Oct. 6, 1917, ch. —, 67.

Sec. 1. War Materials Used in Construction of Airplanes — Sale by President, 67.

Act of July 9, 1918, ch. —, 67.

Aviation, etc., Stations — Experimental Work — Acquisition of Lands, 67.

Ch. XVI, Sec. 1. Aircraft Production Corporation — Creation — Composition — Duties, 67 .

2. Director — Power and Duties — Stock, 68.

3. Dissolution, 68.

4. Assignment of Men and Officers for Duty — Civilian Employees, 68.

5. Existing Contracts for or Title to Equipment, Plants, etc. — Transfer, 69.

CROSS-REFERENCES

Naval Flying Corps, see NAVY.

Signal Corps, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

An Act To create the Aircraft Board and provide for its maintenance.

[*Act of Oct. 1, 1917, ch. —, — Stat. L. —.*]

[**SEC. 1. [Aircraft Board — creation.]** That for the purpose of expanding and coordinating the industrial activities relating to aircraft, or parts of aircraft, produced for any purpose in the United States, and to facilitate generally the development of air service, a board is hereby created, to be known as the Aircraft Board, hereinafter referred to as the board.
[— *Stat. L. —.*]

SEC. 2. [Membership of board.] That the board shall number not more than nine in all. and shall include a civilian chairman, the Chief Signal

Officer of the Army, and two other officers of the Army, to be appointed by the Secretary of War; the Chief Constructor of the Navy and two other officers of the Navy, to be appointed by the Secretary of the Navy; and two additional civilian members. The chairman and civilian members shall be appointed by the President, by and with the advice and consent of the Senate. [— *Stat. L.* —.]

SEC. 3. [Term of office — compensation.] That said board and tenure of office of the members thereof shall continue during the pleasure of the President, but not longer than six months after the present war. The civilian members of the board shall serve without compensation. [— *Stat. L.* —.]

SEC. 4. [Powers and duties.] That the board is hereby empowered, under the direction and control of and as authorized by the Secretary of War and the Secretary of the Navy, respectively, on behalf of the Departments of War and Navy, to supervise and direct, in accordance with the requirements prescribed or approved by the respective departments, the purchase, production, and manufacture of aircraft, engines, and all ordnance and instruments used in connection therewith, and accessories and materials therefor, including the purchase, lease, acquisition, or construction of plants for the manufacture of aircraft, engines, and accessories. *Provided*, That the board may make recommendations as to contracts and their distribution in connection with the foregoing, but every contract shall be made by the already constituted authorities of the respective departments. [— *Stat. L.* —.]

SEC. 5. [Clerks and other employees — offices — expenses.] That the board is also empowered to employ, either in the District of Columbia or elsewhere, such clerks and other employees as may be necessary to the conduct of its business, including such technical experts and advisers as may be found necessary, and to fix their salaries. Such salaries shall conform to those usually paid by the Government for similar service: *Provided*, That by unanimous approval of the board higher compensation may be paid to technical experts and advisers. The board may rent suitable offices in the District of Columbia or elsewhere, purchase necessary office equipment and supplies, including scientific publications and printing, and may incur necessary administrative and contingent expenses, and for all of the expenses enumerated in this paragraph there shall be allotted by the Chief Signal Officer of the Army for the fiscal year nineteen hundred and seventeen and nineteen hundred and eighteen the sum of \$100,000, or so much thereof as shall be necessary, from any appropriation now existing for or hereinafter made to the Signal Corps of the Army, and such appropriation is hereby made available for these purposes: *Provided further*, That except upon the joint and concurrent approval of the Secretary of War and the Secretary of the Navy there shall not be established or maintained under the board any office or organization duplicating or replacing, in whole or in part, any office or organization now existing that can be properly established or maintained by appropriations made for or available for the military or

naval services: *Provided further*, That a report shall be made to Congress on the first day of each regular session of the salaries paid from this appropriation to clerks and employees by grades, and the number in each such grade. [*— Stat. L. —.*]

[SEC. 1.] [Acceptance of land for sites — acquirement of land for sites] * * * The Secretary of War is hereby authorized to accept for the United States from any citizen of the United States a donation of a tract or tracts of land suitable and desirable in his judgment for the purposes of an aviation field and remount station, the terms of the donation also to authorize the use of the property donated for any other service of the United States which may hereafter appear desirable.

The Secretary of War is directed to investigate the suitability of the various military reservations for aviation purposes, and should any of the reservations be found not suitable and not available for aviation he is authorized, in his discretion, to acquire, by purchase, condemnation, or otherwise, for the United States of America, such land as may be necessary for aviation purposes, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, for said purpose. [*39 Stat. L. 622.*]

This is from the Army Appropriation Act of Aug. 29, 1916, ch. 418.

[Aircraft — purchase of patent — effect of litigation involving validity of patent] * * * That such arrangements may be made in relation to the purchase of any basic patent connected with the manufacture and development of aircraft in the United States as in the judgment of the Secretary of War and the Secretary of the Navy will be of the greatest advantage to the Government and to the development of the industry.

That in the event there shall be pending in court litigation involving the validity of said patent or patents, bond, with good and approved security in an amount sufficient to indemnify the United States, shall be required, payable to the United States, conditioned to repay to the United States the amount paid for said patent or patents in the event said patent or patents are finally adjudged invalid. [*39 Stat. L. 1169.*]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

An Act Authorizing the President to take possession, on behalf of the United States, for use as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island in the harbor of San Diego, California, and for other purposes.

[*Act of July 27, 1917, ch. —, — Stat. L. —.*]

[Aviation stations — site — North Island, California.] That the President be, and he is hereby, authorized to cause possession to be taken forth-

with, on behalf of the United States, for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island, in the harbor of San Diego, California, and the provisions of section three hundred and fifty-five, Revised Statutes, shall not apply to the expenditure of any appropriations for improvements thereon for aviation purposes.

The Attorney General or the claimants to the said North Island are authorized to make application for the determination and appraisal of any rights private parties may have in said island over and beyond any rights thereto in the United States to the District Court of the United States for the Southern District of California; the proceedings to be prosecuted in accordance with the laws of the State of California relating to the condemnation of property for public use. Either party may take an appeal from the judgment of such court direct to the Supreme Court of the United States within ninety days after such judgment is rendered. Upon the final ascertainment of the value of any right, title, or interest adjudged to be in any private claimants to the said island there shall be paid into court the value of the same as so determined, together with interest thereon at the rate of six per centum per annum from date possession thereof was taken as herein authorized; and thereupon the United States shall be vested with title to said lands. The amount so paid shall be distributed by order of the court to the owner or owners of such right, title, or interest in said island as their respective interests may be determined by the court. The amount necessary to pay the awards in favor of private claimants is hereby appropriated, out of any money in the Treasury not otherwise specifically appropriated, to be disbursed under orders of the Secretary of War. [— *Stat. L.* —.]

For R. S. sec. 355 mentioned above, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

An Act To provide for the acquisition of an air station site for the United States Navy.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**Aviation station — site — New Jersey.**] That the Secretary of the Navy be and he is hereby, authorized to acquire, by purchase or condemnation, including all easements, riparian and other rights appurtenant thereto, for use for naval purposes, the tract of land situate at Cape May, New Jersey, lying between Princeton and Kansas Avenues and the water front and Cape May Avenue, comprising, exclusive of Pennsylvania Avenue, which intersects the tract and is to remain a public thoroughfare, approximately fifty-seven and seventy-three one-hundredths acres, or such enlarged area for which he may be able to contract within the appropriation, and there is hereby appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the acquisition of said property and of all easements, riparian and other rights appurtenant thereto, the sum of \$150,000: *Provided*, That the Secretary of the Navy shall authorize the payment of no part of this sum, except for perfecting the title and dredging Cold

Spring Harbor and the entrance thereto, in order to make it more available for naval purposes: *And provided further*, That the Secretary of the Navy be, and he is hereby, empowered in his discretion to acquire, if possible, additional acreage without increased cost and within the appropriation herein authorized, and to exact guarantees for the maintenance of the electric railway now running through the above described land; and power is hereby conferred upon the Secretary of the Navy to condemn the said tract of land for naval, aviation, and kindred purposes on the New Jersey coast adjacent to Cold Spring Harbor; and the Secretary of the Navy is hereby directed, in conducting his negotiations with the Cape May Real Estate Company, to maintain intact the obligation existing between the United States and the Cape May Real Estate Company, executed by the said company, June twenty-fifth, nineteen hundred and seven; and that this contract shall not be regarded as a waiver of either the obligation of the company or the rights of the United States. [— *Stat. L.* —.]

[SEC. 1.] * * * [War materials used in construction of airplanes — sale by President.] The President, during the present emergency, is authorized, through the head of any department of the Government, to sell any war materials used in the construction of airplanes which may have been or may hereafter be acquired by the United States for the purpose of the Army or Navy, or for the prosecution of war, to any person, firm, or corporation, or to any foreign state or government engaged with the United States Government in the prosecution of war against a common enemy or its allies, in such manner and upon such terms, at not less than cost, as he in his discretion may deem best: *Provided*, That any moneys received by the United States hereunder shall become available as part of the appropriation by which said property was purchased by the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

[Aviation, etc., stations — experimental work — acquisition of land.] * * * And also, for the establishment, enlargement, equipment, maintenance, and operation of aviation stations, balloon schools, fields for testing and experimental work, including (a) the acquisition of land, or any interest in land, with any buildings and improvements thereon, by purchase, lease, donation, condemnation, or otherwise: *Provided*, That by order of the President any Government property or unappropriated or reserved public lands may be reserved from entry, designated, and used for such aviation stations or fields for testing and experimental work. [— *Stat. L.* —.]

The foregoing paragraph and the following secs. 1-5 are from the Army Appropriation Act of July 9, 1918, ch. —.

[SEC. 1.] [Aircraft Production Corporation — creation — composition — duties.] That the Director of Aircraft Production may, whenever in his judgment it will facilitate and expedite the production of aircraft,

aircraft equipment, or materials therefor, for the United States and Governments allied with it in the prosecution of the present war, form under the laws of the District of Columbia or under the laws of any State one or more corporations for the purchase, production, manufacture, and sale of aircraft, aircraft equipment, or materials therefor, and to build, own, and operate railroads in connection therewith. The total capital stock of the corporation or corporations so formed, together with any bonds, notes, debentures, or other securities issued by them, shall not at any one time exceed \$100,000,000. [— *Stat. L.* —.]

This sec. 1 and the following secs. 2-5 constitute Chapter XVI of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Director — powers and duties — stock.] That the Director of Aircraft Production may, for and on behalf of the United States, subscribe, purchase, and vote not less than a majority of the voting capital stock of any such corporation, and may purchase for and on behalf of the United States all or any part of the preferred nonvoting stock, bonds, notes, debentures, or other securities issued by such corporations, and do all things necessary to protect the interest of the United States and to carry out the purpose of this chapter; and, with the approval of the Secretary of War, may sell any or all of the stock, bonds, notes, debentures, or other securities of the United States in such corporation: *Provided*, That at no time shall the United States be a minority holder of voting stock therein. Any sums heretofore or hereafter appropriated for the purchase or procurement of aircraft, aircraft equipment, or materials therefor, for the Army shall be available for the purchase of the capital stock of such corporation or corporations or their bonds, notes, debentures, or other securities. [— *Stat. L.* —.]

SEC. 3. [Dissolution.] That within one year from the signing of a treaty of peace with the Imperial German Government the Director of Aircraft Production shall, on behalf of the United States as a stockholder, institute such proceedings as are necessary to dissolve such corporation or corporations under the laws of the District of Columbia or the State or States under which such corporation or corporations are organized. Upon the dissolution of the corporation or corporations the same shall be liquidated and the assets distributed in accordance with the laws of the District of Columbia or the State or States under which such corporation or corporations are organized. [— *Stat. L.* —.]

SEC. 4. [Assignment of men and officers for duty — civilian employees.] That the Secretary of War is hereby authorized to assign for duty, under the direction of the Director of Aircraft Production, any enlisted men or commissioned officers, from time to time, in the military organization as he shall deem necessary or desirable to carry on the work of such corporation or corporations: *Provided*, That nothing in this chapter shall prevent such corporation or corporations from employing civilians in the manner customary in the conduct of ordinary business under corporate organization. [— *Stat. L.* —.]

SEC. 5. [Existing contracts for a title to equipment, plants, etc.— transfer.] That, the Secretary of War, acting through the Director of Aircraft Production, is authorized to transfer, by appropriate instruments, to any such corporation as may be found under this chapter, any interest of the United States in any existing contracts for aircraft, aircraft equipment, or materials therefor, and the title to any lands, plants, railroads, or equipment used in or in connection with the production of aircraft, aircraft equipment, or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, shall deem fit. [— *Stat. L.* —.]

BANKRUPTCY

Act of March 2, 1917, ch. 153, 69.

Bankrupts — Debts Not Affected by Discharge — Former Act Amended, 69.

Orders in Bankruptcy Amended, 70.

Order No. 21, 70.

Order No. 32, 70.

CROSS-REFERENCE

As to finality of judgments of Circuit Courts of Appeals in Bankruptcy cases; see JUDICIARY.

An Act To amend section seventeen of the United States bankruptcy law of July first, eighteen hundred and ninety-eight, and amendments thereto of February fifth, nineteen hundred and three.

[*Act of March 2, 1917, ch. 153, 39 Stat. L. 999.*]

[Bankrupts — debts not affected by discharge — former Act amended.]

That section seventeen of an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, as amended February fifth, nineteen hundred and three, be amended so as hereafter to read as follows:

"**SEC. 17.** Debts not affected by a discharge.—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (third) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice of actual knowledge of the proceedings in bankruptcy; or (fourth) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity." [39 *Stat. L.* 999.]

For the Bankruptcy Act of July 1, 1898, ch. 541, § 17, amended by this Act, see 1 *Fed. Stat. Ann.* 578, 1912 *Supp. Fed. Stat. Ann.* 570; 1 *Fed. Stat. Ann.* (2d ed.) 708. The amendment of this section consisted in the addition to the class of debts not affected by discharge, of liability "for breach of promise of marriage accompanied by seduction."

Orders in Bankruptcy Amended

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

IT IS ORDERED that General Order in Bankruptcy No. 21 be amended so as to read as follows:

XXI.

Proof of Debts.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer; if the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending, the deposition may be made by some officer or agent of the corporation having knowledge of the facts. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

(Promulgated November 1, 1915. See 239 U. S. 623.)

For General Order in Bankruptcy amended hereby, see 1 Fed. Stat. Ann. (2d ed.) 856.

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

ORDER.—It is ordered that General Order in Bankruptcy No. XXXII be amended so as to read as follows: Opposition to discharge or composition: A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within 10 days thereafter, unless the time shall be shortened or enlarged by special order of the judge.

(Promulgated June 4, 1917. See 244 U. S. 641.)

For General Order in Bankruptcy No. 32, amended hereby, see 1 Fed. Stat. Ann. (2d ed.) 858.

BANKS

Federal Farm Loan Banks, see AGRICULTURE.

Federal Reserve Banks, see NATIONAL BANKS.

See generally NATIONAL BANKS; TRADE COMBINATIONS AND TRUSTS.

BARRELS

See WEIGHTS AND MEASURES.

BASKETS

See AGRICULTURE.

BILLS OF LADING

Act of Aug. 29, 1916, ch. 415, 73.

Sec. 1. Bills of Lading Act — Application, 73.

- 2. Straight Bill Defined, 73.*
- 3. Order Bill Defined — Negotiability, 73.*
- 4. Order Bills in Parts or Sets — Liability of Carrier, 73.*
- 5. Word "Duplicate" on Order Bill — Liability of Carrier, 73.*
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- 11. Failure to Cancel Order Bill on Delivery — Effect, 75.*
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- 14. Loss, etc., of Bill — Delivery of Goods on Order of Court, 75.*
- 15. Bill Not an Original One — Liability of Carrier, 76.*
- 16. Refusal of Carrier to Deliver — Excuse from Liability, 76.*
- 17. Interpleader, 76.*
- 18. Adverse Claim — Excuse from Liability to Deliver, 76.*
- 19. Failure to Deliver — Defense — Right or Title of Third Person, 76.*
- 20. Loading of Goods by Carrier — Counting Packages — Ascertaining Kind and Quantity — Contents of Bill, 76.*
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- 23. Garnishment Attachment, etc., of Goods in Carrier's Possession — Effect, 77.*
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- 27. Order Bill — Negotiation by Delivery, 78.*
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- 36. Mortgage, etc., of Bill for Security — Implied Warranties, 80.*
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- 38. Possession of Order Bill after Sale, etc., of Goods — Subsequent Negotiation — Effect, 80.*
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42. Definitions, 81.

43. Retroactive Effect, 82.

44. Invalidity of Part of Act — Effect as to Remainder, 82.

45. When Act Becomes Effective, 92.

An Act Relating to bills of lading in interstate and foreign commerce.

[Act of Aug. 29, 1916, ch. 415, 39 Stat. L. 538.]

SEC. 1. [Bills of Lading Act — application.] That bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this Act. *[39 Stat. L. 538.]*

SEC. 2. [Straight bill defined.] That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill. *[39 Stat. L. 539.]*

SEC. 3. [Order bill defined — negotiability.] That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper. *[39 Stat. L. 539.]*

SEC. 4. [Order bills in parts or sets — liability of carrier.] That order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however,* That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing. *[39 Stat. L. 539.]*

SEC. 5. [Word “duplicate” on order bill — liability of carrier.] That when more than one order bill is issued in a State for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word “duplicate,” or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original,

even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however*, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do. [39 Stat. L. 539.]

SEC. 6. [Word "nonnegotiable" on straight bill.] That a straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. [39 Stat. L. 539.]

SEC. 7. [Order bill — limitation of negotiability.] That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [39 Stat. L. 539.]

SEC. 8. [Delivery of goods by carrier — when required — liability for failure to deliver.] That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such demand is accompanied by —

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [39 Stat. L. 539.]

SEC. 9. [Delivery, when justified.] That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is —

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee. [39 Stat. L. 540.]

SEC. 10. [Delivered to one not lawfully entitled — liability.] That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of

property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he —

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [39 Stat. L. 540.]

SEC. 11. [Failure to cancel order bill on delivery — effect.] That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto. [39 Stat. L. 540.]

SEC. 12. [Delivery of part of goods — liability of carrier on bill.] That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either —

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [39 Stat. L. 540.]

SEC. 13. [Alteration, etc., of bill.] That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [39 Stat. L. 540.]

SEC. 14. [Loss, etc., of bill — delivery of goods on order of court.] That where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any

person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided*, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [39 Stat. L. 540.]

SEC. 15. [Bill not an original one — liability of carrier.] That a bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [39 Stat. L. 541.]

SEC. 16. [Refusal of carrier to deliver — excuse from liability.] That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [39 Stat. L. 541.]

SEC. 17. [Interpleader.] That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods or as an original suit, whichever is appropriate. [39 Stat. L. 541.]

SEC. 18. [Adverse claim — excuse from liability to deliver.] That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [39 Stat. L. 541.]

SEC. 19. [Failure to deliver — defense — right or title of third person.] That except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand. [39 Stat. L. 541.]

SEC. 20. [Loading of goods by carrier — counting packages — ascertaining kind and quantity — contents of bill] That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity of bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice,

receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

SEC. 21. [Loading of goods by shipper — contents of bill — weighing facilities by shipper.] That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however,* Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

SEC. 22. [Terms of bill as binding carrier — liability for acts of agent.] That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. [39 Stat. L. 542.]

SEC. 23. [Garnishment attachment, etc., of goods in carrier's possession — effect.] That if goods are delivered to a carrier by the owner or

by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [39 Stat. L. 542.]

SEC. 24. [**Injunction, etc., in attaching bill.**] That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process. [39 Stat. L. 542.]

SEC. 25. [**Liens of carrier — custom.**] That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [39 Stat. L. 542.]

SEC. 26. [**Sale of goods to satisfy lien — effect.**] That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill. [39 Stat. L. 542.]

SEC. 27. [**Order bill — negotiation by delivery.**] That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [39 Stat. L. 542.]

SEC. 28. [**Order bill — negotiation by indorsement.**] That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [39 Stat. L. 543.]

SEC. 29. [**Transfer of bill by delivery — negotiation of straight bill.**] That a bill may be transferred by the holder by delivery, accompanied

with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill can not be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right. [39 Stat. L. 543.]

SEC. 30. [Order bill — by whom negotiated.] That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [39 Stat. L. 543.]

SEC. 31. [Title acquired by person negotiating order bill.] That a person to whom an order bill has been duly negotiated acquires thereby —

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. [39 Stat. L. 543.]

SEC. 32. [Title acquired by person to whom bill has been delivered but not negotiated.] That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods. [39 Stat. L. 543.]

SEC. 33. [Transfer of order bill for value by delivery — right to compel negotiation.] That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [39 Stat. L. 543.]

SEC. 34. [Implied warranties arising out of transfer of bill.] That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants —

- (a) That the bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill.
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby. [39 Stat. L. 543.]

SEC. 35. [Indorsement of bill — liability of indorser.] That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [39 Stat. L. 544.]

SEC. 36. [Mortgagee, etc., of bill for security — implied warranties] That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described. [39 Stat. L. 544.]

SEC. 37. [Negotiation of bill — impairment of validity.] That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion. [39 Stat. L. 544.]

SEC. 38. [Possession of order bill after sale, etc., of goods — subsequent negotiation — effect] That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [39 Stat. L. 544.]

SEC. 39. [Seller's lien or right of stoppage in transitu — defeat of rights of purchaser for value.] That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been

negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [39 Stat. L. 544.]

SEC. 40. [Mortgagee or lien holder—limitation of rights and remedies] That, except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [39 Stat. L. 544.]

SEC. 41. [Offenses—violating provisions of Act.] That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding \$5,000, or both. [39 Stat. L. 544.]

SEC. 42. [Definitions.] First. That in this Act, unless the context of subject matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Bill” means bill of lading governed by this Act.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Person” includes a corporation or partnership, or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“State” includes any Territory, District, insular possession, or isthmian possession. [39 Stat. L. 545.]

SEC. 43. [**Retroactive effect.**] That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof. [39 Stat. L. 545.]

SEC. 44. [**Invalidity of part of Act — effect as to remainder.**] That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof. [39 Stat. L. 545.]

SEC. 45. [**When Act becomes effective.**] That this Act shall take effect and be in force on and after the first day of January next after its passage. [39 Stat. L. 545.]

BONDS

See NATIONAL BANKS; PUBLIC DEBT.

BUREAU OF EFFICIENCY

See CIVIL SERVICE.

CANALS

See RIVERS, HARBORS AND CANALS; WATERS.

CANAL ZONE

See CRIMINAL LAW; HOSPITALS AND ASYLUMS; RIVERS, HARBORS AND CANALS.

CARRIERS

Transportation of Explosives, see EXPLOSIVES.

See generally BILLS OF LADING; INTERSTATE COMMERCE; UNFAIR COMPETITION; WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

CEMETERIES

Act of July 1, 1918, ch. —, 83.

Sec. 1. National Cemetery — Railroads — Right of Way, 83.

Approaches to National Cemetery — Maintenance, 83.

Antietam Battlefield — Superintendent, 83.

[SEC. 1.] [National cemetery — railroads — right of way.] * * *

That no railroads shall be permitted upon the right of way which may have been acquired by the United States to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States. [— *Stat. L. —*.]

This and the two paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

Provisions similar to these have appeared in like Appropriation Acts for many years. See 2 Fed. Stat. Ann. (2d ed.) 25, 26.

[Approaches to national cemetery — maintenance.] * * * No part of any appropriation for national cemeteries or the repair of roadways thereto shall be expended in the maintenance of more than a single approach to any national cemetery. [— *Stat. L. —*.]

See the note to the preceding paragraph of the text.

[Antietam Battlefield — superintendent.] * * * For pay of superintendent of Antietam battle field, said superintendent to perform his duties under the direction of the Quartermaster Corps and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, \$1,500. [— *Stat. L. —*.]

See the note to the second preceding paragraph of the text.

CENSUS

Act of Aug. 7, 1916, ch. 274, 84.

Sec. 1. Cotton Seed Statistics — Collection and Publication, 84.

2. Confidential Nature of Information Furnished — Penalty for Disclosing, 84.

3. Duty to Furnish Information — Failure to Furnish — Penalty, 84.

4. Raw and Prepared Cotton, etc. — Collection and Publication of Statistics, 85.

CROSS-REFERENCE

Division of Cotton and Tobacco Statistics, see COMMERCE DEPARTMENT.

An Act Authorizing the Director of the Census to collect and publish statistics of cotton seed and cottonseed products, and for other purposes.

[*Act of Aug. 7, 1916, ch. 274, 39 Stat. L. 436.*]

[SEC. 1.] [Cotton seed statistics — collection and publication.] That the Director of the Census be, and he is hereby, authorized and directed to collect and publish monthly statistics concerning the quantity of cotton seed received at oil mills, the quantity of seed crushed in such mills, the quantity of crude cottonseed products and refined oil produced, the quantities of these products shipped out of the mills and the quantities of these products and of cotton seed on hand, the quantities of crude and refined cottonseed oil held by refiners, by manufacturers of compound lard, butterine, oleomargarine, and soap, and by brokers, exporters, and warehousemen, engaged in handling crude and refined cottonseed oil, and the quantity of cotton seed and cottonseed products imported and exported: *Provided*, That the cost of the collection and publication of the statistics herein provided for shall not exceed \$10,000 per annum. [39 Stat. L. 436.]

SEC. 2. [Confidential nature of information furnished — penalty for disclosing.] That the information furnished by any individual establishment under the provisions of this Act shall be considered as strictly confidential and shall be used only for the statistical purpose for which it is supplied. Any employee of the Bureau of the Census who, without the written authority of the Director of the Census, shall publish or communicate any information given into his possession by reason of his employment under the provisions of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than one year, or both. [39 Stat. L. 437.]

SEC. 3. [Duty to furnish information — failure to furnish — penalty.] That it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any cottonseed-oil mill, manufacturing establishment, refinery, or warehouse, where cottonseed products are produced, manufactured, or stored, when requested by the Director of the Census or by any special agent or other employee of the Bureau of the Census acting under the instructions of said director, to furnish completely and correctly, to the best of his knowledge, all of the information concerning the quantity of cotton seed received, consumed, or on hand, and the quantity of crude and refined oil, cake and meal, hulls and linters produced, and the quantity of these products shipped and on hand. The request of the Director of the Census for information concerning the quantity of cotton seed received, consumed, and on hand, the quantity of crude oil shipped, and the quantity of crude oil consumed and stocks on hand may be made in writing or by a visiting representative, and if made in writing shall be forwarded by registered mail, and the registry receipt of the Post Office Department shall be accepted as prima facie evidence of such demand. Any owner, president, treasurer, secretary, director, or other officer or agent of any cottonseed oil or manufacturing establishment, refinery, or warehouse, where cotton seed and cottonseed products are

manufactured or stored, who, under the conditions hereinbefore stated, shall refuse or willfully neglect to furnish any of the information herein provided for or shall willfully give answers that are false shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000. [39 Stat. L. 437.]

SEC. 4. [Raw and prepared cotton, etc.—collection and publication of statistics.] That the Director of the Census be, and he is hereby, authorized and directed to collect and publish statistics of raw and prepared cotton and linters, cotton waste, and hull fiber consumed in the manufacture of guncotton and explosives of all kinds, and of absorbent and medicated cotton, during the calendar year nineteen hundred and fifteen, and quarterly thereafter, and the quantity held in such establishments at the end of each quarter. The statistics herein provided for are in addition to those now collected in compliance with the Act of Congress approved July twenty-second, nineteen hundred and twelve, the provisions of that Act being made applicable to and governing the collection and publication of the data. [39 Stat. L. 437.]

For the Act of July 22, 1912, ch. 249, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 38; 2 Fed. Stat. Ann. (2d ed.) 55.

CHARITIES

Act of Feb. 27, 1917, ch. 137, 85.

American National Red Cross — Reports — Former Act Amended, 85.

An Act To amend section six of the Act entitled “An Act to incorporate the American National Red Cross,” approved January fifth, nineteen hundred and five.

[*Act of Feb. 27, 1917, ch. 137, 39 Stat. L. 946.*]

[American National Red Cross — reports — former act amended.] That section six of the Act entitled “An Act to incorporate the American National Red Cross,” approved January fifth, nineteen hundred and five, is hereby amended to read as follows:

“**SEC. 6.** That the said American National Red Cross shall as soon as practicable after the first day of July of each year make and transmit to the Secretary of War a report of its proceedings for the fiscal year ending June thirtieth next preceding, including a full, complete, and itemized report of receipts and expenditures of whatever kind, which report shall be duly audited by the War Department, and a copy of said report shall be transmitted to Congress by the War Department. [39 Stat. L. 946.]

For the Act of Jan. 5, 1906, ch. 23, § 6, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 67; 2 Fed. Stat. Ann. (2d ed.) 64.

CHECKS

See PUBLIC MONEYS.

CHILD LABOR

See LABOR.

CHINESE EXCLUSION

Act of July 1, 1918, ch. —, 86.

Sec. 1. Enforcement of Chinese Exclusion Laws — Horses and Motor Vehicles, 86.

[SEC. 1.] [Enforcement of Chinese exclusion laws — horses and motor vehicles.] * * * That the purchase, use, maintenance, and operation of horses and motor vehicles required in the enforcement of the * * * Chinese exclusion laws outside of the District of Columbia may be contracted for and the cost thereof paid from the appropriation for the execution of those laws, under such terms and conditions as the Secretary of Labor may prescribe. [— *Stat. L. —*.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

CITIZENSHIP

See NATURALIZATION.

CIVIL SERVICE

Act of Feb. 28, 1916, ch. 37, 86.

Sec. 1. Bureau of Efficiency — Creation — Duties, 86.

Res. of March 27, 1918, No. —, 86.

Examinations — Place of Holding, 87.

Act of July 3, 1918, ch. —, 87.

Sec. 1. Employees of Civil Service Commission, 87.

[SEC. 1.] [Bureau of Efficiency — creation — duties.] * * * Hereafter the Division of Efficiency of the Civil Service Commission shall be an independent establishment, and shall be known as the Bureau of Efficiency; and the officers and employees of the said division shall be transferred to the Bureau of Efficiency without reappointment, and the

records and papers pertaining to the work of the said division and the furniture, equipment, and supplies that have been purchased for it shall be transferred to the said bureau: *And provided further*, That the duties relating to efficiency ratings imposed upon the Civil Service Commission by section four of the legislative, executive, and judicial appropriation Act approved August twenty-third, nineteen hundred and twelve, and the duty of investigating the administrative needs of the service relating to personnel in the several executive departments and independent establishments, imposed on the Civil Service Commission by the legislative, executive, and judicial appropriation Act approved March fourth, nineteen hundred and thirteen, are transferred to the Bureau of Efficiency. [39 Stat. L. 15.]

This is from the Deficiencies Appropriation Act of Feb. 28, 1916, ch. 37.

For the Act of Aug. 23, 1912, ch. 350, § 4, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 44; 2 Fed. Stat. Ann. (2d ed.) 169.

The provision of the Act of March 4, 1913, ch. 142, § 1, 32 Stat. L. 750, mentioned in the paragraph, read as follows:

"The Civil Service Commission shall investigate and report to the President, with its recommendations, as to the administrative needs of the service relating to personnel in the several executive departments and independent establishments in the District of Columbia, and report to Congress details of expenditure and of progress of work hereunder at the beginning of each regular session."

Joint Resolution Amending the Act of July second, nineteen hundred and nine, governing the holding of civil service examinations.

[*Res. of March 27, 1918, No. —, — Stat. L. —.*]

[**Examinations — place of holding.**] That the Act of July second, nineteen hundred and nine (Thirty-sixth Statutes at Large, Numbered One), is hereby amended so as to permit the United States Civil Service Commission, during the period of the present war, to hold examinations of applicants for positions in the Government service in the District of Columbia, and to permit applicants from the several States and Territories of the United States to take said examinations in the said District of Columbia and elsewhere in the United States where examinations are usually held. Said examinations shall be permitted in addition to those required to be held by said Act of July second, nineteen hundred and nine. (Thirty-sixth Statutes at Large, Numbered One): *Provided*, That nothing herein shall be so construed as to abridge the existing law of apportionment or change the requirements of existing law as to legal residence and domicile of such applicants. [— Stat. L. —.]

For Act of July 2, 1909, ch. 2, § 7, see 1909 Supp. Fed. Stat. Ann. 716; 2 Fed. Stat. Ann. (2d ed.) 168.

[**SEC. 1.**] [**Employees of Civil Service Commission.**] * * * No detail of clerks or other employees from the executive departments or other Government establishments in the District of Columbia to the Civil Service Commission, for the performance of duty in the District of Columbia, shall be made for or during the fiscal year nineteen hundred and nineteen. The

Civil Service Commission shall, however, have power in case of emergency to transfer or detail any of its employees herein provided for to or from its office force, field force, or rural carrier examining board. [*Stat. L. —.*]

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

CLAIMS

Act of April 18, 1918, ch. —, 88.

Sec. 1. Damages Caused by American Forces Abroad — Presentment of Claims, 88.

2. Approval of Claims, 88.

3. Payment of Claims, 88.

4. Statute as Superseding Other Modes of Indemnity, 88.

Act of July 1, 1918, ch. —, 89.

Private Property of Inhabitants of European Country — Damages to or Loss — Adjustment, 89.

Act of July 9, 1918, ch. —, 89.

Chapter VI:

Claims for Property Lost in Military Service — Former Act Amended, 89.

Limitation of Liability, 90.

Determination of Value — Replacement — Commutation, 90.

Final Determination of Claim, 90.

Time of Making Claims, 90.

An Act To give indemnity for damages caused by American forces.

[*Act of April 18, 1918, ch.—, — Stat. L. —.*]

[**SEC. 1.**] [**Damages caused by American forces abroad — presentment of claims.**] That claims of inhabitants of France or of any other European country not an enemy or ally of an enemy for damages caused by American military forces may be presented to any officer designated by the President, and when approved by such an officer shall be paid under regulations made by the Secretary of War. [*Stat. L. —.*]

SEC. 2. [Approval of claims.] That claims under this statute shall not be approved unless they would be payable according to the law or practice governing the military forces of the country in which they occur. [*Stat. L. —.*]

SEC. 3. [Payment of claims.] That hereafter appropriations for the incidental expenses of the Quartermaster Corps shall be available for paying the claims herein described. [*Stat. L. —.*]

SEC. 4. [Statute as superseding other modes of indemnity.] That this statute does not supersede other modes of indemnity now in existence and does not diminish responsibility of any member of the military forces to the person injured or to the United States. [*Stat. L. —.*]

[Private property of inhabitants of European country — damages to or loss — adjustment] * * * That hereafter the Secretary of the Navy is authorized to consider, ascertain, adjust, determine, and pay the amounts due on all claims for damages to and loss of private property of inhabitants of any European country not an enemy or ally of an enemy when the amount of the claim does not exceed the sum of \$1,000, occasioned and caused by men in the naval service during the period of the present war, all payments in settlement of such claims to be made out of "Pay, Miscellaneous." [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

[Claims for property lost in military service — former act amended.]

That the Act entitled "An Act to provide for the settlement of the claims of officers and enlisted men of the Army, for loss of private property destroyed in the military service of the United States," approved March third, eighteen hundred and eighty-five (chapter three hundred and thirty-five, Twenty-third Statutes, page three hundred and fifty), be, and the same is hereby, amended to read as follows:

"SEC. 1. That private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the fifth day of April, nineteen hundred and seventeen, has been or shall hereafter be lost, damaged, or destroyed in the military service shall be replaced, or the damage thereto or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur in any of the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the owner.

"Second. When such private property so lost or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

"Third. When it appears that such private property was so lost or destroyed in consequence of its owner having given his attention to the saving of property belonging to the United States which was in danger at the same time and in similar circumstances.

"Fourth. When during travel under orders the regulation allowance of baggage transferred by a common carrier is lost or damaged; but replacement or recoupment in these circumstances shall be limited to the extent of such loss or damage over and above the amount recoverable from said carrier.

"Fifth. When such private property is destroyed or captured by the enemy, or is destroyed to prevent its falling into the hands of the enemy, or is abandoned on account of lack of transportation or by reason of mili-

tary emergency requiring its abandonment, or is otherwise lost in the field during campaign.” [— *Stat. L.* —.]

This and the following four paragraphs of the text are from chapter VI of the Army Appropriation Act of July 9, 1918.

For the Act of March 3, 1885, ch. 335, see 2 Fed. Stat. Ann. 26; 2 Fed. Stat. Ann. (2d ed.) 205.

“**SEC. 2. [Limitation of liability.]** That, except as to such property as by law or regulations is required to be possessed and used by officers, enlisted men, and members of the Nurse Corps (female), respectively, the liability of the Government under this chapter shall be limited to damage to or loss of such articles of personal property as the Secretary of War shall decide or declare to be reasonable, useful, necessary, and proper for officers, enlisted men, or members of the Nurse Corps (female), respectively, as the case may be, while in quarters, engaged in the public service, in the line of duty. [— *Stat. L.* —.]

“**SEC. 3. [Determination of value — replacement — commutation.]** That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain and determine the value of the property lost, destroyed, captured, or abandoned as specified in the foregoing sections, or the amount of the damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated: *Provided*, That in time of war or of operations during public disaster such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, shall be replaced in kind from Government property on hand, or adequate commutation given therefor when replacement in kind can not be made, or can not be made within a reasonable time, by the supply officer or quartermaster of the organization to which the person entitled thereto belongs or with which he is serving upon the order of the commanding officer thereof. [— *Stat. L.* —.]

“**SEC. 4. [Final determination of claim.]** That the tender of replacement or of commutation or the determination made by the proper accounting officers of the Treasury upon a claim presented as provided for in the foregoing section, shall constitute a final determination of any claim cognizable under this chapter, and such claim shall not thereafter be reopened or considered. [— *Stat. L.* —.]

“**SEC. 5. [Time of making claims.]** That no claim arising under this chapter shall be considered unless made within two years from the time that it accrued; except that when a claim accrues in time of war, or when war intervenes within two years after its accrual, such claim may be presented within two years after peace is established.” [— *Stat. L.* —.]

CLAYTON ACT

See TRADE COMBINATIONS AND TRUSTS.

COAL LANDS

See INDIANS; PUBLIC LANDS.

COAST AND GEODETIC SURVEY

*Act of May 22, 1917, ch. —, 91.**Sec. 16. Vessels, Equipment, Stations and Personnel — Transfer to War or Navy Department — Officers — Appointments — Pay — Rank — Regulation, 91.**Act of July 1, 1918, ch. —, 92.**Sec. 1. Advances of Money to Chiefs of Parties — Supplies — Services, 92.*

SEC. 16. [Vessels, equipment, stations and personnel — transfer to War or Navy Department — officers — appointments — pay — rank — regulation.] That the President is hereby authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of the War Department, or of the Navy Department, such vessels, equipment, stations, and personnel of the Coast and Geodetic Survey as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided:* That such vessels, equipment, stations, and personnel shall be returned to the Coast and Geodetic Survey when such national emergency ceases, in the opinion of the President, and nothing in this Act shall be construed as transferring the Coast and Geodetic Survey or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further,* That any of the personnel of the Coast and Geodetic Survey who may be transferred as herein provided shall, while under the jurisdiction of the War Department or Navy Department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army or Navy, as the case may be, in so far as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law: *And provided further,* That the President is authorized to appoint, by and with the advice and consent of the Senate, the field officers of the Coast and Geodetic Survey, who are now officially designated assistants and aids, as follows: Officers now designated assistants and receiving a salary of \$2,000 or more per annum shall be appointed hydrographic and geodetic engineers; officers now designated assistants and receiving a salary of \$1,200 or greater but less than \$2,000 per annum shall be appointed junior hydrographic and geodetic engineers; officers now designated aids shall be appointed aids: *Provided,* That no person shall be appointed aid or shall be promoted from aid to junior hydrographic and geodetic engineer or from junior hydrographic and geodetic engineer to hydrographic and geodetic engineer until after passing a satisfactory mental and physical examination conducted in accordance with regulations prescribed by the Secretary of

Commerce, except that the President is authorized to nominate for confirmation the assistants and aids in the service on the date of the passage of this Act.

Nothing in this Act shall reduce the total amount of pay and allowances they were receiving at the time of transfer. While actually employed in active service under direct orders of the War Department or of the Navy Department members of the Coast and Geodetic Survey shall receive the benefit of all provisions of laws relating to disability incurred in line of duty or loss of life.

When serving with the Army or Navy the relative rank shall be as follows:

Hydrographic and geodetic engineers receiving \$4,000 or more shall rank with and after colonels in the Army and captains in the Navy.

Hydrographic and geodetic engineers receiving \$3,000 or more but less than \$4,000 shall rank with and after lieutenant colonels in the Army and commanders in the Navy.

Hydrographic and geodetic engineers receiving \$2,500 or more but less than \$3,000 shall rank with and after majors in the Army and lieutenant commanders in the Navy.

Hydrographic and geodetic engineers receiving \$2,000 or more but less than \$2,500 shall rank with and after captains in the Army and lieutenants in the Navy.

Junior hydrographic and geodetic engineers shall rank with and after first lieutenants in the Army and lieutenants (junior grade) in the Navy.

Aids shall rank with and after second lieutenants in the Army and ensigns in the Navy.

And nothing in this Act shall be construed to affect or alter their rates of pay and allowances when not assigned to military duty as hereinbefore mentioned.

The Secretary of War, the Secretary of the Navy, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Coast and Geodetic Survey in time of war, and for the co-operation of that service with the War and Navy Departments in time of peace in preparations for its duties in war, which regulations shall not be effective unless approved by each of the said Secretaries, and included therein may be rules and regulations for making reports and communications between the officers or bureaus of the War and Navy Departments and the Coast and Geodetic Survey. [— *Stat. L.* —.]

The foregoing section 16 is a part of an Act of May 22, 1917, ch. —, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes."

[SEC. 1.] [Advances of money to chiefs of parties — supplies — services.] * * * That advances of money from available appropriations hereafter may be made to the Coast and Geodetic Survey and by authority of the superintendent thereof to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of Commerce may direct, and accounts arising under such advances shall be rendered through and by the disbursing officer of the Coast and Geodetic

Survey to the Treasury Department as under advances heretofore made to chiefs of parties: *And provided further*, That hereafter the purchase of supplies or the procurement of services outside the District of Columbia may be made in the open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

COAST GUARD

Act of June 28, 1916, ch. 181, 93.

Coast Guard Station — Establishment in Louisiana, 93.

Act of Aug. 29, 1916, ch. 417, 94.

Operation of Coast Guard as Part of Navy — Personnel Subject to Navy Laws — Punishment for Offenses — Limitation, 94.

Reimbursement of Expenses When Paid by Navy Department, 94.

Precedence of Officers When Operating with Navy, 94.

Assignments of Personnel to Duty — Maintenance of Stations, etc., 94.

Construction of Vessels, 94.

Instruction of Officers and Men at Army and Navy Aviation Schools, 95.

Increased Pay for Aviation Duty — Number to be Detailed — Number of Third Lieutenants Increased — Restriction Repealed, 95.

Act of Aug. 29, 1916, ch. 418, 95.

Sec. 1. Protection of Uniform, 95.

Act of May 22, 1917, ch. —, 95.

Sec. 15. Increases of Pay, 95.

Act of July 1, 1918, ch. —, 96.

Sec. 1. Civilian Instructors — Pay and Allowances; Cadets — Pay and Allowances, 96.

Act of July 1, 1918, ch. —, 96.

Commissioned Line Officers and Engineer Officers — Promotion; Constructors — Promotion, 96.

Captain Commandant — Engineer in Chief — Commissioned Officers — Promotion, 96.

Superintendents — Rank, Pay and Allowance, 97.

Effect of Temporary Promotions, 97.

Duration of Promotions, 97.

Retirement, 98.

Officers on Duty Abroad — Pay and Allowances, 98.

Effect of Act, 98.

CROSS-REFERENCE

See *HEALTH AND QUARANTINE.*

An Act To establish a Coast Guard station on the coast of Louisiana, in the vicinity of Barataria Bay.

[*Act of June 28, 1916, ch. 181, 39 Stat. L. 239.*]

[Coast guard station — establishment in Louisiana.] That the Secretary of the Treasury be, and he is hereby, authorized to establish a Coast

Guard station on the coast of Louisiana in the vicinity of Barataria Bay, at such point as he may deem best. [39 Stat. L. 239.]

[Operation of Coast Guard as part of Navy — personnel subject to Navy laws — punishment for offenses — limitation.] * * * Whenever, in time of war, the Coast Guard operates as a part of the Navy in accordance with law, the personnel of that service shall be subject to the laws prescribed for the government of the Navy: *Provided*, That in the initiation, prosecution, and completion of disciplinary action, including remission and mitigation of punishments for any offense committed by any officer or enlisted man of the Coast Guard, the jurisdiction shall hereafter depend upon and be in accordance with the laws and regulations of the department having jurisdiction of the person of such offender at the various stages of such action: *Provided further*, That any punishment imposed and executed in accordance with the provisions of this section shall not exceed that to which the offender was liable at the time of the commission of his offense. [39 Stat. L. 600.]

The foregoing paragraph and the following six paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Reimbursement of expenses when paid by Navy Department.] * * * Hereafter whenever, in accordance with law, the expenses of the Coast Guard are paid by the Navy Department, any naval appropriations from which payments are so made shall be reimbursed from available appropriations made by Congress for the expenses of the Coast Guard. [39 Stat. L. 600.]

See the note to the second preceding paragraph of the text.

[Precedence of officers when operating with Navy.] * * * Whenever the personnel of the Coast Guard, or any part thereof, is operating with the personnel of the Navy in accordance with law, precedence between commissioned officers of corresponding grades in the two services shall be determined by the date of commissions in those grades. [39 Stat. L. 600.]

See the note to the second preceding paragraph of the text.

[Assignments of personnel to duty — maintenance of stations, etc.] * * * Any commissioned or warrant officer, petty officer, or other enlisted man in the Coast Guard may be assigned to any duty which may be necessary for the proper conduct of the Coast Guard; and the Secretary of the Treasury in time of peace and the Secretary of the Navy in time of war may, in his discretion, man any Coast Guard station during the entire year, or any portion thereof, maintain any house of refuge as a Coast Guard station, and change, establish, and fix the limits of Coast Guard districts and divisions. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, this page.

[Construction of vessels.] * * * That the Secretary of the Navy, at the request of the Secretary of the Treasury, is hereby authorized to build

the vessels herein authorized, or any Coast Guard vessels hereafter authorized, at such navy yards as the Secretary of the Navy may designate. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

This proviso followed an appropriation for the construction of certain coast guard vessels.

[Instruction of officers and men at Army and Navy aviation schools.]

* * * At the request of the Secretary of the Treasury the Secretaries of War and Navy are authorized to receive officers and enlisted men of the Coast Guard for instruction in aviation at any aviation school maintained by the Army and Navy, and such officers and enlisted men shall be subject to the regulations governing such schools. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

[Increased pay for aviation duty — number to be detailed — number of third lieutenants increased — restriction repealed.] * * * Hereafter officers and enlisted men of the Coast Guard, when detailed for aviation duty, shall receive the same percentages of increases in pay and allowances as are now or may hereafter be prescribed by law for officers and men of the Navy detailed for aviation duty: *Provided*, That no more than a yearly average of fifteen commissioned officers and a total of forty warrant officers and enlisted men of the Coast Guard detailed for duty involving actual flying in aircraft shall receive any increase in pay or allowances by reason of such detail or duty: *Provided further*, That the number of third lieutenants and third lieutenants of engineers now authorized by law for the Coast Guard is hereby increased ten and five, respectively, and such portion of the Act approved August twenty-fourth, nineteen hundred and twelve, which provides that no additional appointments as cadets or cadet engineers shall be made in the Revenue-Cutter Service unless hereafter authorized by Congress is hereby revoked. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

For the provision of the Act of Aug. 24, 1912, ch. 355, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 366; 2 Fed. Stat. Ann. (2d ed.) 312.

[SEC. 1.] [Protection of uniform.] That section one hundred and twenty-five of the Act entitled "An Act for further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, shall apply to the Coast Guard in the same manner as to the Army, Navy, and Marine Corps. [39 Stat. L. 649.]

This is from the Army Appropriation Act of Aug. 29, 1916, ch. 418.

For the Act of June 3, 1916, ch. 134, § 125, mentioned in the text, prohibiting the unauthorized wearing of the uniform of the Army, Navy, or Marine Corps, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

[SEC. 15.] [Increases of pay.] * * * That during the continuance of the present war, warrant officers, petty officers and enlisted men in the United States Coast Guard shall receive the same rates of pay as are or may

hereafter be prescribed for corresponding grades or ratings and length of service in the Navy. [— *Stat. L.* —.]

This is a part of section 16 of the Act of May 22, 1917, ch. —, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes."

[SEC. 1.] [Civilian instructors — pay and allowances; cadets — pay and allowances.] * * * That a civilian instructor in the Coast Guard, after five years' service as such, shall have the pay and allowances of a second lieutenant, and after ten years of such service shall have the pay and allowances of a first lieutenant in the Coast Guard: *Provided further*, That cadets in the Coast Guard shall receive the same pay and allowances as are now or may hereafter be provided by law for midshipmen in the Navy. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Commissioned line officers and engineer officers — promotion; constructors — promotion.] That the President of the United States be, and he is hereby, authorized during the period of the present war to promote temporarily, with the advice and consent of the Senate, commissioned line officers and engineer officers of the United States Coast Guard below the rank and grades of captain and captain of engineers to the ranks and grades of the Coast Guard not above captain and captain of engineers, respectively, without regard to number or length of service in rank or grade: *Provided*, That such temporary promotions may be to such rank and grade in the Coast Guard not above captain or captain of engineers as correspond to the rank and grade that may be attained in accordance with law, either permanently or temporarily, by line officers of the regular Navy of the same length of total service: *Provided further*, That constructors of the Coast Guard now authorized by law who shall have had as much total service in the Coast Guard as the officer of the Construction Corps of the Navy at the foot of the permanent or temporary list of those with the rank of lieutenant commanders may be temporarily promoted to the rank of captain of the Coast Guard: *And provided further*, That for the purposes of this Act service in the Coast Guard to be counted must have been continuous: *And provided further*, That nothing contained in this paragraph shall operate to disturb the relative position of officers in the Coast Guard with reference to precedence or promotion, but all such officers otherwise qualified shall be advanced in rank with or ahead of officers in the Coast Guard who were their juniors on the date of this Act.

The provisions of this and the following seven paragraphs of the text are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Captain commandant — engineer in chief — commissioned officers — promotion.] That the President be, and he is hereby, authorized during

the period of the present war to promote temporarily, with the advice and consent of the Senate, the captain commandant of the Coast Guard to the rank of commodore in the Navy and brigadier general in the Army, and the engineer in chief of the Coast Guard to the rank of captain in the Navy and colonel in the Army, officers of the Coast Guard holding permanent commissions above the rank and grade of first lieutenant and first lieutenant of engineers as follows: Not to exceed two-fifths of the captains authorized by law, and not to exceed one-third of the captains of engineers authorized by law, to have the rank of senior captain in the Coast Guard; and not to exceed one-third the senior captains authorized by law, to have the rank of captain in the Navy and colonel in the Army: *Provided*, That the senior captains, captains, and captains of engineers to be temporarily promoted as herein provided, shall be selected as provided by law for promotion by selection in the Navy. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Superintendents — rank, pay and allowance.] That during the period of the present war, the senior district superintendent, the three district superintendents next in order of seniority, the four district superintendents next below these three in order of seniority, and the junior five district superintendents shall have the rank, pay, and allowances of captain, first lieutenant, and second lieutenant, and third lieutenant in the Coast Guard, respectively. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 93.

[Effect of temporary promotions.] That the permanent and probationary commissions of officers of the Coast Guard shall not be vacated by reason of the temporary promotions and advancements authorized by this Act, nor shall said officers be prejudiced in their relative lineal rank in regard to their promotion as provided for in existing law: *Provided*, That no officer who shall receive a temporary promotion or advancement under this Act shall be entitled to pay or allowances except under such promotion or advancement: *Provided further*, That upon the determination of the temporary promotions and advancements authorized by this Act, the officers so promoted and advanced shall revert to the rank and grade from which temporarily promoted or advanced, unless such officers in the meantime, in accordance with law, become entitled to promotion to a higher grade or rank in the permanent Coast Guard, in which case they shall revert to said higher grade or rank, and shall, after passing the prescribed examinations, be commissioned accordingly. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 93.

[Duration of promotions.] That all temporary promotions and advancements authorized by this Act shall continue in force only until otherwise directed by the President, and not later than six months after the termination of the present war. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 93.

[Retirement.] That any officer of the Coast Guard temporarily promoted or advanced in grade or rank in accordance with the provisions of this Act who shall be retired from active service under his permanent commission while holding such temporary grade or rank, except for physical disability incurred in line of duty, shall be placed on the retired list with the grade or rank to which his position in the permanent Coast Guard at the date of his retirement would entitle him. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

[Officers on duty abroad — pay and allowances.] That officers of the United States Coast Guard on sea duty or on shore duty beyond the continental limits of the United States during the period of the present war shall receive the same increase of pay and allowances in all respects as are now or may hereafter be provided by law for officers of the Navy of corresponding rank. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

[Effect of Act.] That nothing contained in this Act relating to the Coast Guard shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Coast Guard except for the passage of this Act. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

COINAGE, MINTS, AND ASSAY OFFICES

Act of June 12, 1916, ch. 142, 99.

Gold Certificates — Issue for Stamped Bullion — Amount Limited — Former Act Amended, 99.

Act of April 23, 1918, ch. —, 99.

Sec. 1. Silver Dollars — Melting or Breaking up — Sale as Bullion — Retirement of Silver Certificates, 99.

2. Purchase of Silver from Mines to Replace Bullion Sold — Resale — Coinage, 100.

3. Purpose of Sale of Silver Bullion, 100.

4. Difference between Nominal and Face Value of Silver Dollars Melted — Reimbursement, 100.

5. Prevention of Contraction of Currency — Issuance of Federal Reserve Bank Notes — Security, 101.

6. Retirement of Federal Reserve Bank Notes, 101.

7. Tax on Federal Reserve Bank Notes — Adjustment, 101. —

8. Existing Provisions of Law as Applicable to Federal Reserve Bank Notes Issued, 101.

9. Continuance of Certain Existing Statutory Provisions, 102.

Act of June 1, 1918, ch. —, 102.

Sec. 1. Illinois Fifty Cent Pieces — Coinage Authorized, 102.

2. Application of Laws, 102.

An Act To amend section six of an Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes, approved March fourteenth, nineteen hundred, as amended by the Act of March second, nineteen hundred and eleven.

[*Act of June 12, 1916, ch. 142, 39 Stat. L. 225.*]

[Gold certificates — issue for stamped bullion — amount limited — former Act amended.] That section six of an Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes, approved March fourteenth, nineteen hundred, as amended by the Act approved March second, nineteen hundred and eleven, be, and the same is hereby, further amended by striking from the last proviso of said section six the word “one-third” and inserting in lieu thereof the word “two-thirds,” making the last proviso of said section six read as follows:

“*And provided further, That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any Assistant Treasurer of the United States, deposits of gold bullion bearing the stamp of the coinage mints of the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than \$1,000 in value, and issue gold certificates therefor of the description herein authorized. But the amount of gold bullion and foreign coin so held shall not at any time exceed two-thirds of the total amount of gold certificates at such time outstanding. And section fifty-one hundred and ninety-three of the revised Statutes of the United States is hereby repealed.*” [39 Stat. L. 225.]

For the Parity Act of March 14, 1900, ch. 41, § 6, amended by this Act, see 2 Fed. Stat. Ann. 131.

For the Amendatory Act of March 2, 1911, ch. 268, mentioned in this Act, see 1912 Supp. Fed. Stat. Ann. 37.

For said Parity Act of March 14, 1900, ch. 41, § 6, as amended by the Act of March 2, 1911, ch. 268, amended by this Act, see 2 Fed. Stat. Ann. (2d ed.) 349.

For R. S. sec. 5193, repealed by this Act, see 2 Fed. Stat. Ann. 133 note; 2 Fed. Stat. Ann. (2d ed.) 351 note.

An Act To conserve the gold supply of the United States; to permit the settlement in silver of trade balances adverse to the United States; to provide silver for subsidiary coinage and for commercial use; to assist foreign governments at war with the enemies of the United States; and for the above purposes to stabilize the price and encourage the production of silver.

[*Act of April 23, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Silver dollars — melting or breaking up — sale as bullion — retirement of silver certificates.] That the Secretary of the Treasury is hereby authorized from time to time to melt or break up and to sell as bullion not in excess of three hundred and fifty million standard silver dollars now or hereafter held in the Treasury of the United States. Any silver certificates which may be outstanding against such standard silver dollars so melted or broken up shall be retired at the rate of \$1 face amount

of such certificates for each standard silver dollar so melted or broken up. Sales of such bullion shall be made at such prices not less than \$1 per ounce of silver one thousand fine and upon such terms as shall be established from time to time by the Secretary of the Treasury. [— *Stat. L.* —.]

SEC. 2. [Purchase of silver from mines to replace bullion sold — resale — coinage.] That upon every such sale of bullion from time to time the Secretary of the Treasury shall immediately direct the Director of the Mint to purchase in the United States, of the product of mines situated in the United States and of reduction works so located, an amount of silver equal to three hundred and seventy-one and twenty-five hundredths grains of pure silver in respect of every standard silver dollar so melted or broken up and sold as bullion. Such purchases shall be made in accordance with the then existing regulations of the Mint and at the fixed price of \$1 per ounce of silver one thousand fine, delivered at the option of the Director of the Mint at New York, Philadelphia, Denver, or San Francisco. Such silver so purchased may be resold for any of the purposes hereinafter specified in section three of this Act, under rules and regulations to be established by the Secretary of the Treasury, and any excess of such silver so purchased over and above the requirements for such purposes, shall be coined into standard silver dollars or held for the purpose of such coinage, and silver certificates shall be issued to the amount of such coinage. The net amount of silver so purchased, after making allowance for all resales, shall not exceed at any one time the amount needed to coin an aggregate number of standard silver dollars equal to the aggregate number of standard silver dollars theretofore melted or broken up and sold as bullion under the provisions of this Act, but such purchases of silver shall continue until the net amount of silver so purchased, after making allowance for all resales, shall be sufficient to coin therefrom an aggregate number of standard silver dollars equal to the aggregate number of standard silver dollars theretofore so melted or broken up and sold as bullion. [— *Stat. L.* —.]

SEC. 3. [Purpose of sale of silver bullion.] That sales of silver bullion under authority of this Act may be made for the purpose of conserving the existing stock of gold in the United States, of facilitating the settlement in silver of trade balances adverse to the United States, of providing silver for subsidiary coinage and for commercial use, and of assisting foreign governments at war with the enemies of the United States. The allocation of any silver to the Director of the Mint for subsidiary coinage shall, for the purposes of this Act, be regarded as a sale or resale. [— *Stat. L.* —.]

SEC. 4. [Difference between nominal and face value of silver dollars melted — reimbursement.] That the Secretary of the Treasury is authorized, from any moneys in the Treasury not otherwise appropriated, to reimburse the Treasurer of the United States for the difference between the nominal or face value of all standard silver dollars so melted or broken up and the value of the silver bullion, at \$1 per ounce of silver one thousand fine, resulting from the melting or breaking up of such standard silver dollars. [— *Stat. L.* —.]

SEC. 5. [Prevention of contraction of currency — issuance of Federal reserve bank notes — security.] That in order to prevent contraction of the currency, the Federal reserve banks may be either permitted or required by the Federal Reserve Board, at the request of the Secretary of the Treasury, to issue Federal reserve bank notes, in any denominations (including denominations of \$1 and \$2) authorized by the Federal Reserve Board, in an aggregate amount not exceeding the amount of standard silver dollars melted or broken up and sold as bullion under authority of this Act, upon deposit as provided by law with the Treasurer of the United States as security therefor, of United States certificates of indebtedness, or of United States one-year gold notes. The Secretary of the Treasury may, at his option, extend the time of payment of any maturing United States certificates of indebtedness deposited as security for such Federal reserve bank notes for any period not exceeding one year at any one extension and may, at his option, pay such certificates of indebtedness prior to maturity, whether or not so extended. The deposit of United States certificates of indebtedness by Federal reserve banks as security for Federal reserve bank notes under authority of this Act shall be deemed to constitute an agreement on the part of the Federal reserve bank making such deposits that the Secretary of the Treasury may so extend the time of payment of such certificates of indebtedness beyond the original maturity date or beyond any maturity date to which such certificates of indebtedness may have been extended, and that the Secretary of the Treasury may pay such certificates in advance of maturity, whether or not so extended. [— *Stat. L.* —.]

SEC. 6. [Retirement of Federal reserve bank notes.] That as and when standard silver dollars shall be coined out of bullion purchased under authority of this Act, the Federal reserve banks shall be required by the Federal Reserve Board to retire Federal reserve bank notes issued under authority of section five of this Act, if then outstanding, in an amount equal to the amount of standard silver dollars so coined, and the Secretary of the Treasury shall pay off and cancel any United States certificates of indebtedness deposited as security for Federal reserve bank notes so retired. [— *Stat. L.* —.]

SEC. 7. [Tax on Federal reserve bank notes — adjustment.] That the tax on any Federal reserve bank notes issued under authority of this Act, secured by the deposit of United States certificates of indebtedness or United States one-year gold notes, shall be so adjusted that the net return on such certificates of indebtedness, or such one-year gold notes, calculated on the face value thereof, shall be equal to the net return on United States two per cent bonds, used to secure Federal reserve bank notes, after deducting the amount of the tax upon such Federal reserve bank notes so secured. [— *Stat. L.* —.]

SEC. 8. [Existing provisions of law as applicable to Federal reserve bank notes issued.] That except as herein provided, Federal reserve bank notes issued under authority of this Act, shall be subject to all existing provisions of law relating to Federal reserve bank notes. [— *Stat. L.* —.]

SEC. 9. [Continuance of certain existing statutory provisions.] That the provisions of Title VII of an Act approved June fifteenth, nineteen hundred and seventeen, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," and the powers conferred upon the President by subsection (b) of section five of an Act approved October sixth, nineteen hundred and seventeen, known as the "Trading with the Enemy Act," shall, in so far as applicable to the exportation from or shipment from or taking out of the United States of silver coin or silver bullion, continue until the net amount of silver required by section two of this Act shall have been purchased as therein provided. [— *Stat. L.* —.]

The Act of June 15, 1917, title VII, is given *post*, p. 245.

The Act of Oct. 6, 1917, § 5, is given *post*, under **TRADING WITH THE ENEMY.**

An Act To authorize the coinage of fifty-cent pieces in commemoration of the one hundredth anniversary of the admission of the State of Illinois into the Union.

[*Act of June 1, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Illinois fifty-cent pieces — coinage authorized.] That, as soon as practicable, and in commemoration of the one hundredth anniversary of the admission of the State of Illinois into the Union as a State, there shall be coined at the mints of the United States, silver fifty-cent pieces to the number of one hundred thousand, such fifty-cent pieces to be of the standard troy weight, composition, diameter, device, and design, as shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, and said fifty-cent pieces shall be legal tender in any payment to the amount of their face value. [— *Stat. L.* —.]

SEC. 2. [Application of laws.] That all laws now in force relating to the subsidiary silver coins of the United States and the coining or striking of the same, regulating and guarding the process of coinage, providing for the purchase of material, and for the transportation, distribution, and redemption of the coins, for the prevention of debasement or counterfeiting, for security of the coin, or for any other purpose, whether said laws are penal or otherwise, shall, so far as applicable, apply to the coinage herein authorized: *Provided*, That the Government shall not be subject to the expense of making the necessary dies and other preparations for this coinage. [— *Stat. L.* —.]

COMMERCE

See **CRIMINAL LAW**; **IMPORTS AND EXPORTS**; **INTERSTATE COMMERCE**;
SHIPPING AND NAVIGATION.

COMMERCE DEPARTMENT

Act of May 10, 1916, ch. 117, 103.

Sec. 1. Division of Cotton and Tobacco Statistics — Information for Tobacco Reports How Obtainable — Compensation of Special Agents, 103.

Commercial Attachés, 103.

Act of July 3, 1918, ch. —, 103.

Sec. 1. Advertisements for Proposals — Exceptions, 103.

[SEC. 1.] [Division of cotton and tobacco statistics — information for tobacco reports how obtainable — compensation of special agents.] * * * That hereafter there shall be in the official organization of the bureau a separate, distinct, and independent division called the Division of Cotton and Tobacco Statistics: *Provided further, That hereafter* the Director of the Census may procure the information for the tobacco reports required by this Act and the Act approved April thirtieth, nineteen hundred and twelve, by mail or by special agents or by other employees of the Bureau of the Census: *Provided further, That* the compensation of not to exceed five special agents provided for in this paragraph may be fixed at a rate not to exceed \$8 per day. [39 Stat. L. 110.]

This and the following paragraph are from the Legislative, Executive, and Judicial Appropriation Act of May 10, 1916, ch. 117.

For the Act of April 30, 1912, ch. 102, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 36; 2 Fed. Stat. Ann. (2d ed.) 53.

* * * **Commercial attachés:** For commercial attachés, to be appointed by the Secretary of Commerce, after examination to be held under his direction to determine their competency, and to be accredited through the State Department, whose duties shall be to investigate and report upon such conditions in the manufacturing industries and trade of foreign countries as may be of interest to the United States; and for one clerk to each of said commercial attachés to be paid a salary not to exceed \$1,500 each; and for necessary traveling and subsistence expenses, rent, purchase of reports, books of reference and periodicals, travel to and from the United States, exchange on official checks, and all other necessary expenses not included in the foregoing; such commercial attachés shall serve directly under the Secretary of Commerce and shall report directly to him. [39 Stat. L. 111.]

See the note to the preceding paragraph of this Act.

[SEC. 1.] [Advertisements for proposals — exceptions.] * * * During the present war section thirty-seven hundred and nine of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Department of Commerce when

the aggregate amount involved does not exceed the sum of \$25. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

For R. S. sec. 3709, relating to advertisements for proposals, see 6 Fed. Stat. Ann. 93; 8 Fed. Stat. Ann. (2d ed.) 336.

CONGRESS

Act of July 1, 1916, ch. 209, 104.

Sec. 1. Plates of Portraits — Delivery to Heirs or Legal Representatives, 104.

Act of March 3, 1917, ch. 163, 104.

Sec. 1. House of Representatives — Clerks, etc., 104.

6. Joint Committee on Printing — Membership — Powers and Duties When Congress Not in Session, 104.

CROSS-REFERENCES

Seeds to Congressmen, see AGRICULTURE.

False Personation of Member of Congress, see FALSE PERSONATION.

[SEC. 1.] [Plates of portraits — delivery to heirs or legal representatives.] * * * The Secretary of the Treasury is authorized to deliver the engraved plates of portraits that have been or may hereafter be made of deceased Senators and Representatives in Congress, to their heirs or legal representatives on such terms and conditions as he may determine. [39 *Stat. L.* 275.]

This is from the Sundry Civil Appropriations Act of July 1, 1916, ch. 209.

[SEC. 1.] [House of Representatives — clerks, etc.] * * * That all clerks to Members, Delegates, and Resident Commissioners shall be placed on the roll of employees of the House and be subject to be removed at the will of the Member, Delegate, or Resident Commissioner by whom they are appointed; and any Member, Delegate, or Resident Commissioner may appoint one or more clerks, who shall be placed on the roll as the clerk of such Member, Delegate, or Resident Commissioner making such appointments. [39 *Stat. L.* 1076.]

The foregoing paragraph and the following section 6 are from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

Provisions identical with those of this paragraph were made by the Act of May 10, 1916, ch. 117, § 1, 39 *Stat. L.* 72, and the subsequent Act of July 3, 1918, ch. —, § 1, — *Stat. L.* —.

SEC. 6. [Joint Committee on Printing — membership — powers and duties when Congress not in session.] That hereafter the members of the Joint Committee on Printing who are reelected to the succeeding Congress shall continue as members of said committee until their successors are

chosen: *Provided*, That the President of the Senate and the Speaker of the House of Representatives shall, on the last day of a Congress, appoint members of their respective Houses who have been elected to the succeeding Congress to fill any vacancies which may then be about to occur on said committee, and such appointees and the members of said committee who shall have been reelected shall continue until their successors are chosen. The Joint Committee on Printing shall, when Congress is not in session, exercise all the powers and duties devolving upon said committee as provided by law, the same as when Congress is in session. [39 Stat. L. 1121.]

See the note to the preceding paragraph of the text.

CONSPIRACY

See CRIMINAL LAW.

CONSULAR OFFICERS

See DIPLOMATIC AND CONSULAR OFFICERS.

CONTRACTS

See PUBLIC CONTRACTS.

COPYRIGHT

See TRADING WITH THE ENEMY.

CORPORATIONS

Act of April 5, 1918, ch. —, 107.

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CROSS-REFERENCES

See LABOR; SHIPPING AND NAVIGATION

An Act To provide further for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to provide credits for industries and enterprises in the United States necessary or contributory to the prosecution of the war, and to supervise the issuance of securities and for other purposes.

[Act of April 5, 1918, ch. —, — Stat. L. —.]

TITLE I.—WAR FINANCE CORPORATION

[SEC. 1.] [Creation of corporation — name — duration of exercise of powers.] That the Secretary of the Treasury and four additional persons (who shall be the directors first appointed as hereinafter provided), are hereby created a body corporate and politic in deed and in law by the name, style, and title of the “ War Finance Corporation ” (herein called the Corporation), and shall have succession for a period of ten years: *Provided*, That in no event shall the Corporation exercise any of the powers conferred by this Act, except such as are incidental to the liquidation of its assets and the winding up of its affairs, after six months after the termination of the war, the date of such termination to be fixed by proclamation of the President of the United States. *[— Stat. L. —.]*

SEC. 2. [Capital stock.] That the capital stock of the Corporation shall be \$500,000,000, all of which shall be subscribed by the United States of America, and such subscription shall be subject to call upon the vote of three-fifths of the board of directors of the Corporation, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$500,000,000, or so much thereof as may be necessary for the purpose of making payment upon such subscription when and as called. Receipts for payments by the United States of America for or on account of such stock shall be issued by the Corporation to the Secretary of the Treasury, and shall be evidence of stock ownership. *[— Stat. L. —.]*

SEC. 3. [Directors — personnel — numbers — oath — term — vacancies — quorum.] That the management of the Corporation shall be vested in a board of directors, consisting of the Secretary of the Treasury, who shall be chairman of the board, and four other persons, to be appointed by the President of the United States, by and with the advice and consent of the Senate. No director, officer, attorney, agent, or employee of the Corporation shall in any manner directly or indirectly, participate in the determination of any question affecting his personal interests, or the interests of any corporation, partnership, or association, in which he is directly or indirectly interested; and each director shall devote his time, not otherwise required by the business of the United States, principally to the business of the Corporation. Before entering upon his duties, each of the four directors so appointed, and each officer, shall take an oath faithfully to discharge the duties of his office. Nothing contained in this or any other Act shall be construed to prevent the appointment as a director of the Corporation of any officer or employee under the United States or of a director of a Federal reserve bank.

Of the four directors so appointed, the President of the United States

shall designate two to serve for two years, and two for four years; and thereafter each director so appointed shall serve for four years. Whenever a vacancy shall occur among the directors so appointed, the person appointed director to fill any such vacancy shall hold office for the unexpired term of the member whose place he is selected to fill. Any director shall be subject to removal by the President of the United States. Three members of the board of directors shall constitute a quorum for the transaction of business. [— *Stat. L.* —.]

SEC. 4. [Salaries of directors.] That the four directors of the Corporation appointed as hereinbefore provided shall receive annual salaries, payable monthly, of \$12,000. Any director receiving from the United States any salary or compensation for services shall not receive as salary from the Corporation any amount which, together with any salary or compensation received from the United States, would make the total amount paid to him by the United States and by the Corporation exceed \$12,000. [— *Stat. L.* —.]

SEC. 5. [Office of corporation — location — branch offices.] That the principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors. [— *Stat. L.* —.]

SEC. 6. [Powers and duties.] That the Corporation shall be empowered and authorized to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary for the prosecution of its business; to sue and be sued; to complain and defend in any court of competent jurisdiction, State or Federal; to appoint, by its board of directors, and fix the compensation of such officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation, to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, subject to the approval of the Secretary of the Treasury, by-laws regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed, and prescribing the powers and duties of its officers and agents. [— *Stat. L.* —.]

SEC. 7. [Advances to banks and trust companies — power to make — amount — security.] That the Corporation shall be empowered and authorized to make advances, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding five years from the respective dates of such advances:

(1) To any bank, banker, or trust company, in the United States, which shall have made after April sixth, nineteen hundred and seventeen, and which shall have outstanding, any loan or loans to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war, and evidenced by a note or notes, but no such

advance shall exceed seventy-five per centum of the face value of such loan or loans; and

(2) To any bank, banker, or trust company, in the United States, which shall have rendered financial assistance, directly or indirectly, to any such person, firm, corporation, or association by the purchase after April sixth, nineteen hundred and seventeen, of its bonds or other obligations, but no such advance shall exceed seventy-five per centum of the value of such bonds or other obligations at the time of such advance, as estimated and determined by the board of directors of the Corporation.

All advances shall be made upon the promissory note or notes of such bank, banker, or trust company, secured by the notes, bonds, or other obligations, which are the basis of any such advance by the Corporation, together with all the securities, if any, which such bank, banker, or trust company may hold as collateral for such notes, bonds, or other obligations.

The Corporation shall, however, have power to make advances (a) up to one hundred per centum of the face value of any such loan made by any such bank, banker, or trust company to any such person, firm, corporation, or association, and (b) up to one hundred per centum of the value at the time of any such advance (as estimated and determined by the board of directors of the Corporation) of such bonds or other obligations by the purchase of which financial assistance shall have been rendered to such person, firm, corporation, or association: *Provided*, That every such advance shall be secured in the manner described in the preceding part of this section, and in addition thereto by collateral security, to be furnished by the bank, banker, or trust company, of such character as shall be prescribed by the board of directors, of a value, at the time of such advance (as estimated and determined by the board of directors of the Corporation), equal to at least thirty-three per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time.

SEC. 8. [Advances to savings institutions or building and loan associations — security — rate of interest.] That the Corporation shall be empowered and authorized to make advances from time to time, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding one year, to any savings bank, banking institution or trust company, in the United States, which receives savings deposits, or to any building and loan association in the United States, on the promissory note or notes of the borrowing institution, whenever the Corporation shall deem such advances to be necessary or contributory to the prosecution of the war or important in the public interest: *Provided*, That such note or notes shall be secured by the pledge of securities of such character as shall be prescribed by the board of directors of the Corporation, the value of which, at the time of such advance (as estimated and determined by the board of directors of the Corporation) shall be equal in amount to at least one hundred and thirty-three per centum of the amount of such advance. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrowing institution is located, but such rate of interest shall in no case be greater than the

average rate receivable by the borrowing institution on its loans and investments made during the six months prior to the date of the advance, except that where the average rate so receivable by the borrowing institution is less than such rate of discount for ninety-day commercial paper the rate of interest on such advance shall be equal to such rate of discount. The Corporation shall retain power to require additional security at any time. [— *Stat. L.* —.]

SEC. 9. [Advances to person, firm, corporation or association — amount — rate of interest.] That the Corporation shall be empowered and authorized, in exceptional cases, to make advances directly to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war (but only for the purpose of conducting such business in the United States and only when in the opinion of the board of directors of the Corporation such person, firm, corporation, or association is unable to obtain funds upon reasonable terms through banking channels or from the general public), for periods not exceeding five years from the respective dates of such advances, upon such terms, and subject to such rules and regulations as may be prescribed by the board of directors of the Corporation. In no case shall the aggregate amount of the advances made under this section exceed at any one time an amount equal to twelve and one-half per centum of the sum of (1) the authorized capital stock of the Corporation plus (2) the aggregate amount of bonds of the Corporation authorized to be outstanding at any one time when the capital stock is fully paid in. Every such advance shall be secured by adequate security of such character as shall be prescribed by the board of directors of a value at the time of such advance (as estimated and determined by the board of directors), equal to (except in case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad) at least one hundred and twenty-five per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrower is located. [— *Stat. L.* —.]

SEC. 10. [Aggregate amount of advances under this title.] That in no case shall the aggregate amount of the advances made under this title to any one person, firm, corporation, or association exceed at any one time an amount equal to ten per centum of the authorized capital stock of the Corporation, but this section shall not apply in the case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad. [— *Stat. L.* —.]

SEC. 11. [Power to deal in bonds and obligations of United States.] That the Corporation shall be empowered and authorized to subscribe for, acquire, and own, buy, sell, and deal in bonds and obligations of the

United States issued or converted after September twenty-fourth, nineteen hundred and seventeen, to such extent as the board of directors, with the approval of the Secretary of the Treasury, may from time to time determine. [— *Stat. L.* —.]

SEC. 12. [Issuance of own bonds — power — amount — maturity — rate of interest — how secured — issuances for advances — sale — payment in foreign moneys.] That the Corporation shall be empowered and authorized to issue and have outstanding at any one time its bonds in an amount aggregating not more than six times its paid-in capital, such bonds to mature not less than one year nor more than five years from the respective dates of issue, and to bear such rate or rates of interest, and may be redeemable before maturity at the option of the Corporation, as may be determined by the board of directors, but such rate or rates of interest shall be subject to the approval of the Secretary of the Treasury. Such bonds shall have a first and paramount floating charge on all the assets of the Corporation, and the Corporation shall not at any time mortgage or pledge any of its assets. Such bonds may be issued at not less than par in payment of any advances authorized by this title, or may be offered for sale publicly or to any individual, firm, corporation, or association, at such price or prices as the board of directors, with the approval of the Secretary of the Treasury, may determine.

Upon such terms not inconsistent herewith as may be determined from time to time by the board of directors, with the approval of the Secretary of the Treasury, at or before the issue thereof, any of such bonds may be issued payable in any foreign money or foreign moneys, or issued payable at the option of the respective holders thereof either in dollars or in any foreign money or foreign moneys at such fixed rate of exchange as may be stated in any such bonds. For the purpose of determining the amount of bonds issued payable in any foreign money or foreign moneys the dollar equivalent shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury in pursuance of the provisions of section twenty-five of the Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four. [— *Stat. L.* —.]

For Act of Aug. 27, 1894, § 26, see *Fed. Stat. Ann.* 143; 2 *Fed. Stat. Ann.* (2d ed.) 368.

SEC. 13. [Bonds of Corporation as securities in Federal reserve bank transactions.] That the Federal reserve banks shall be authorized, subject to the maturity limitations of the Federal reserve Act and to regulations of the Federal Reserve Board, to discount the direct obligations of member banks secured by such bonds of the Corporation and to rediscount eligible paper secured by such bonds and indorsed by a member bank. No discount or rediscount under this section shall be granted at a less interest charge than one per centum per annum above the prevailing rates for eligible commercial paper of corresponding maturity.

Any Federal reserve bank may, with the approval of the Federal Reserve Board, use any obligation or paper so acquired for any purpose for which it is authorized to use obligations or paper secured by bonds or notes of

the United States not bearing the circulation privilege: *Provided, however,* That whenever Federal reserve notes are issued against the security of such obligations or paper the Federal Reserve Board may make a special interest charge on such notes, which, in the discretion of the Federal Reserve Board, need not be applicable to other Federal reserve notes which may from time to time be issued and outstanding. All provisions of law, not inconsistent herewith, in respect to the acquisition by any Federal reserve bank of obligations or paper secured by such bonds or notes of the United States, and in respect to Federal reserve notes issued against the security of such obligations or paper, shall extend, in so far as applicable, to the acquisition of obligations or paper secured by the bonds of the Corporation and to the Federal reserve notes issued against the security of such obligations or paper. [— *Stat. L.* —.]

SEC. 14. [Business of Corporation when commenced.] That the Corporation shall not exercise any of the powers granted by this title or perform any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the President of the United States to commence business under the provisions of this title. [— *Stat. L.* —.]

SEC. 15. [Earnings — Federal reserve banks as depositaries and fiscal agents — liquidation of assets — winding up affairs.] That all net earnings of the Corporation not required for its operation shall be accumulated as a reserve fund until such time as the Corporation liquidates under the terms of this title. Such reserve fund shall, upon the direction of the board of directors, with the approval of the Secretary of the Treasury, be invested in bonds and obligations of the United States, issued or converted after September twenty-fourth, nineteen hundred and seventeen, or upon like direction and approval may be deposited in member banks of the Federal Reserve System, or in any of the Federal reserve banks, or be used from time to time, as well as any other funds of the Corporation, in the purchase or redemption of any bonds issued by the Corporation. The Federal reserve banks are hereby authorized to act as depositaries for and as fiscal agents of the Corporation in the general performance of the powers conferred by this title. Beginning six months after the termination of the war, the date of such termination to be fixed by a proclamation of the President of the United States, the directors of the Corporation shall proceed to liquidate its assets and to wind up its affairs, but the directors of the Corporation, in their discretion, may, from time to time, prior to such date, sell and dispose of any securities or other property acquired by the Corporation. Any balance remaining after the payment of all its debts shall be paid into the Treasury of the United States as miscellaneous receipts, and thereupon the Corporation shall be dissolved. [— *Stat. L.* —.]

SEC. 16. [Bonds of Corporation — exemption from taxation.] That any and all bonds issued by the Corporation shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes,

and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, corporations, or associations. The interest on an amount of such bonds the principal of which does not exceed in the aggregate \$5 000, owned by any individual, partnership, corporation, or association, shall be exempt from the taxes referred to in clause (b). The Corporation, including its franchise and the capital and reserve or surplus thereof, and the income derived therefrom, shall be exempt from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except that any real property of the Corporation shall be subject to State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed. [— *Stat. L.* —.]

SEC. 17. [**Liability of United States for obligations of Corporation.**] That the United States shall not be liable for the payment of any bond or other obligation or the interest thereon issued or incurred by the Corporation, nor shall it incur any liability in respect of any act or omission of the Corporation. [— *Stat. L.* —.]

SEC. 18. [**Crimes and offenses.**] That whoever (1) makes any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association any advance under this title, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever willfully overvalues any security by which any such advance is secured, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

Whoever (1) falsely makes, forges, or counterfeits any bond, coupon, or paper in imitation of or purporting to be in imitation of a bond or coupon issued by the Corporation; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by the Corporation, knowing the same to be falsely made, forged, or counterfeited; or (3) falsely alters any such bond, coupon, or paper; or (4) passes, utters, or publishes as true any falsely altered or spurious bond, coupon, or paper issued or purporting to have been issued by the Corporation, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or (2) with intent to defraud the Corporation or any other company, body politic or corporate, or any individual, or to deceive any officer of the Corporation, (a) makes any false entry in any book, report, or statement of the Corporation, or (b) without authority from the directors draws any order or assigns any note, bond, draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

The Secretary of the Treasury is hereby authorized to direct and use the

Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction any person committing any of the offenses punishable under this section. [— *Stat. L.* —.]

SEC. 19. [Reports of Corporation to Congress.] That the Corporation shall file quarterly reports with the Secretary of the Senate and with the Clerk of the House of Representatives, stating as of the first day of each month of the quarter just ended (1) the total amount of capital paid in, (2) the total amount of bonds issued, (3) the total amount of bonds outstanding, (4) the total amount of advances made under each of sections seven, eight, and nine, (5) a list of the classes and amount of securities taken under each of such sections, (6) the total amount of advances outstanding under each of sections seven, eight, and nine, and (7) such other information as may be hereafter required by either House of Congress.

The Corporation shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures. [— *Stat. L.* —.]

SEC. 20. [R. S. sec. 5202 amended.]

This section amends R. S. sec. 5202, which limits the indebtedness to be incurred by national banking associations. The section is put under the title **NATIONAL BANKS**, and adds to R. S. sec. 5202 the sixth paragraph reading as follows: "Sixth. Liabilities incurred under the provisions of the War Finance Corporation Act."

TITLE II.—CAPITAL ISSUES COMMITTEE.

SEC. 200. [Creation of committee — membership — term of office — salaries.] That there is hereby created a committee to be known as the "Capital Issues Committee," hereinafter called the Committee, and to be composed of seven members to be appointed by the President of the United States, by and with the advice and consent of the Senate. At least three of the members shall be members of the Federal Reserve Board.

No member, officer, attorney, agent, or employee of the Committee shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interests, or the interest of any corporation, partnership, or association in which he is directly or indirectly interested. Before entering upon his duties, each member and officer shall take an oath faithfully to discharge the duties of his office. Nothing contained in this or any other Act shall be construed to prevent the appointment as a member of the Committee, of any officer or employee under the United States or of a director of a Federal reserve bank.

The terms during which the several members of the Committee shall respectively hold office shall be determined by the President of the United States, and the compensation of the several members of the Committee who are not members of the Federal Reserve Board shall be \$7,500 per annum, payable monthly, but if any such member receives any other compensation from any office or employment under the United States the amount so received shall be deducted from such salary, and if such other compensation is \$7,500 or more, such member shall receive no salary as a member of the Committee. Any member shall be subject to removal by

the President of the United States. The President shall designate one of the members as chairman, but any subsequent vacancy in the chairmanship shall be filled by the Committee. Four members of the Committee shall constitute a quorum for the transaction of business. [— *Stat. L.* —.]

SEC. 201. [Employees — appointment — compensation — suspension of civil service rules.] That the Committee may employ and fix the compensation of such officers, attorneys, agents, and other employees as may be deemed necessary to conduct its business, who shall be appointed without regard to the provisions of the Act entitled "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto or any rules or regulations made in pursuance thereof. No such officer, attorney, agent, employee shall receive more compensation than persons performing services of like or similar character under the Federal Reserve Board. [— *Stat. L.* —.]

For Act of Jan. 16, 1883, see 1 Fed. Stat. Ann. 809; 2 Fed. Stat. Ann. (2d ed.) 155.

SEC. 202. [Expenses of Committee — officers — place of exercising powers.] That all the expenses of the Committee, including all necessary expenses for transportation incurred by the members or by its officers, attorneys, agents, or employees under its orders in making an investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

The Committee may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary, but shall not expend more than \$10,000 annually for offices in the District of Columbia.

The principal office of the Committee shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Committee may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. [— *Stat. L.* —.]

SEC. 203. [Powers — control over issuance of securities — limitations — effect of approval of securities on their validity.] That the Committee may, under rules and regulations to be prescribed by it from time to time, investigate, pass upon, and determine whether it is compatible with the national interest that there should be sold or offered for sale or for subscription any issue, or any part of any issue, of securities hereafter issued by any person, firm, corporation, or association, the total or aggregate par or face value of which issue and any other securities issued by the same person, firm, corporation, or association since the passage of this Act is in excess of \$100,000. Shares of stock of any corporation or association without nominal or par value shall for the purpose of this section be deemed to be of the par value of \$100 each. Any securities which upon the date of the passage of this Act are in the possession or control of the corporation, association, or obligor issuing the same shall be deemed to have been issued after the passage of this Act within the meaning hereof.

Nothing in this title shall be construed to authorize such Committee to pass upon (1) any borrowing by any person, firm, corporation, or association in the ordinary course of business as distinguished from borrowing for capital purposes, (2) the renewing or refunding of indebtedness existing at the time of the passage of this Act, (3) the resale of any securities the sale or offering of which the Committee has determined to be compatible with the national interest, (4) any securities issued by any railroad corporation the property of which may be in the possession and control of the President of the United States, or (5) any bonds issued by the War Finance Corporation.

Nothing done or omitted by the Committee hereunder shall be construed as carrying the approval of the Committee or of the United States of the legality, validity, worth, or security of any securities. [— *Stat. L.* —.]

SEC. 204. [Appropriation to defray expenses.] That there is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the remainder of the fiscal year ending June thirtieth, nineteen hundred and eighteen, and the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$200,000 for the purpose of defraying the expenses of the establishment and maintenance of the Committee, including the payment of the salaries and rents herein authorized. [— *Stat. L.* —.]

SEC. 205. [Report of Committee to Congress.] That the Committee shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures, and also including the names of all officers and employees and the salary paid to each. [— *Stat. L.* —.]

SEC. 206. [Continuance in effect of title.] That this title shall continue in effect until, but not after, the expiration of six months after the termination of the war, the date of such termination to be determined by a proclamation of the President of the United States, but the President may at any time by proclamation declare that this title is no longer necessary, and thereupon it shall cease to be in effect. [— *Stat. L.* —.]

TITLE III.—MISCELLANEOUS.

SEC. 300. [Violations of provisions of Act.] That whoever willfully violates any of the provisions of this Act, except where a different penalty is provided in this Act, shall, upon conviction in any court of the United States of competent jurisdiction, be fined not more than \$10,000 or imprisoned for not more than one year, or both; and whoever knowingly participates in any such violation, except where a different penalty is provided in this Act, shall be punished by a fine or imprisonment, or both. [— *Stat. L.* —.]

SEC. 301. [Stamp taxes — notes secured by United States obligations.]
This section will be found under the title *INTERNAL REVENUE, infra*, p. 374.

SEC. 302. [Invalidity of part of Act — effect as to remainder.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, or, in case any court of competent jurisdiction shall adjudge to be invalid any provisions hereof in respect of any class or classes of securities, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, part, or subject matter of this Act directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 303. [“Securities” as used in Act defined.] That the term “securities,” as used in this Act, includes stocks, shares of stock, bonds, debentures, notes, certificates of indebtedness, and other obligations. [— *Stat. L.* —.]

SEC. 304. [Right to amend, alter or repeal.] That the right to amend, alter or repeal this Act is hereby expressly reserved. [— *Stat. L.* —.]

SEC. 305. [Short title of Act.] That the short title of this Act shall be the “War Finance Corporation Act.” [— *Stat. L.* —.]

SEC. 306. [Repeal of inconsistent statutory provisions.] That all provisions of any Act or Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

COSTS

Act of July 1, 1918, ch. —, 117.

Sec. 1. Seamen — Courts — Security for Fees and Costs, 117. ¶

[SEC. 1.] [Seamen — courts — security for fees and costs.] * * * That courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —. Similar provisions have appeared in like Acts for preceding years.

Costs in appellate courts.— This section does not apply to appellate courts. *Ex p. Adu*, 247 U. S. 27, 38 S. Ct. 447, 62 U. S. (L. ed.) 602; *The Nigretia*, 249 Fed. 348.

Alien seamen are included in this section. *The Memphian*, (D. C. Mass. 1917) 245 Fed. 484.

COTTON

Cotton Futures Act, see INTERNAL REVENUE.

Cotton Statistics, see CENSUS; COMMERCE DEPARTMENT.

COUNTERFEITING

See CRIMINAL LAW; NAVY; PASSPORTS; PUBLIC DEBT.

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Act of June 15, 1917, ch. — ("Espionage Act"), 120.

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*Sec. 1. Obtaining Information Respecting National Defense —
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2. Communication of Information to Enemy, 121.

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X. Counterfeiting Government Seal, 127.

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CROSS-REFERENCE

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An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States and for other purposes.

[*Act of June 15, 1917, ch. —, — Stat. L. —.*]

TITLE I.

ESPIONAGE.

SEC. 1. [Obtaining information respecting national defense — photographs, etc.] That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this title: or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes,

or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both. [*—Stat. L. —.*]

This is known as the "Espionage Act."

SEC. 2. [Communication of information to enemy.] (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall correct, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with

respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years. [— *Stat. L.* —.]

SEC. 3. [Making false reports — causing insubordination, etc.— obstructing recruiting — disloyal, etc., publications.] Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever, when the United States is at war, shall willfully cause, or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States into contempt, scorn, contumely, or disrepute, or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both: *Provided*, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service. Any such employee shall be dismissed by the head of the department in which the employee may be engaged, and any such

official shall be dismissed by the authority having power to appoint a successor to the dismissed official. [— *Stat. L. — as amended by — Stat. L. —*.]

As originally enacted this section was as follows:

"SEC. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both."

It was amended to read as given in the text by the Act of May 16, 1918, ch. —, § 1, entitled "An Act To amend section three, title one, of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June fifteenth, nineteen hundred and seventeen, and for other purposes."

Section 2 of said amendatory Act was in part as follows:

"SEC. 2. That section one of Title XII and all other provisions of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June fifteenth, nineteen hundred and seventeen, which apply to section three of Title I thereof shall apply with equal force and effect to said section three as amended."

The constitutionality of this section has been sustained in *U. S. v. Pierce*, 245 Fed. 878.

State statute.—Chapter 463 of the Minnesota Laws of 1917, making it a criminal offense to advocate that men should not enlist in the military forces or aid in prosecuting the war, does not infringe the constitutional provision conferring upon Congress the power to raise armies, nor the constitutional provision preserving freedom of speech and of the press, and is not abrogated or superseded by the Espionage Act. *State v. Holm*, (Minn.) 166 N. W. 181.

Interfering with army or navy operations.—The Espionage Act is not intended to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk, but only false facts, wilfully put forward as true, and broadly, with the specific intent to interfere with army or navy operations. The more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake. The United States can prosecute only for acts that Congress has denounced as crimes. Congress has not denounced as crimes any mere disloyal utterances, nor any slander or libel of the President or any other officer of the United States. *United States v. Hall*, 248 Fed. 150.

Whoever, when the United States is at war, wilfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, commits a crime against the United States. It is not necessary that

the operation or success of the military or naval forces be actually interfered with, or that the success of its enemies be actually promoted. The making or conveyance of false reports or false statements with the intent to interfere with the operation or success of either the military or naval forces of the United States or to promote the success of the enemies of the United States is all sufficient. *U. S. v. Pierce*, 245 Fed. 878.

"Military and naval forces" in the Espionage Act mean the same as in the declaration of war, the ordinary meaning, being those organized and in service, not persons merely registered and subject to future organization and service. *U. S. v. Hall*, 248 Fed. 150.

"To the injury of the service of the United States."—Section 3 of the so-called Espionage Act clearly points out three classes of acts constituting offenses thereunder. The first consists in the wilful making or conveying false reports or statements with the intent specified. The second consists in wilfully causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States. The third consists in wilfully obstructing the recruiting or enlistment service of the United States to the injury of the service of the United States. It may be a question whether the making and conveyance of false reports and statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, must be accompanied by an intent and purpose to injure the service of the United States,

and whether such false reports and statements must be of a nature or character which would injure the service of the United States. So it may be a question whether one who wilfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, must intend and purpose to injure the service of the United States. In short, do the words "to the injury of the service of the United States" relate back to and qualify each of the clauses of the section? Must the indictment allege, and must the government prove, not only that the United States is at war, and that the false reports and statements were made and conveyed with intent to interfere with the operation or success of the military or naval forces, but that such acts actually resulted either in injury to the service of the United States or were intended so to do? This is true as to obstructing the recruiting and enlistment service, as the section so says in plain terms. But the obstruction need not be physical and all obstruction of such service is injurious to the service of the United States. Obstruction does not necessarily imply prevention. The flowing stream of water may be obstructed, and often is, while its continuous onward flow is not wholly prevented, and its ultimate onward flow may not be prevented at all. Any and all acts and words or writings that interfere with the operation or success of the military or naval forces of the United States, and all attempts, successful or unsuccessful, by acts, words, or writings, to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States in time of war, work to the injury of the service of the United States. When Congress wrote into section 3, above quoted, the words "or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States," it may have had in mind the hundreds and thousands of cases where fathers and mothers and brothers and sisters will obstruct in a way and to an extent the recruiting and enlistment service by urging and soliciting their sons and brothers not to enlist. No one will contend, I think, that such an act will be held a willful obstruction of the enlistment service to the injury of the service of the United States within the intent and meaning of section 3 of the act under consideration. But should some third person go about soliciting and urging young men not to enlist, extravagantly and untruly depicting the horrors and

dangers and consequences of war, impugning the motives and purpose of the President and Congress in declaring war, and misrepresenting the objects sought to be attained by our government in declaring the existence of a state of war, we have a case where a jury well may find a willful obstruction of the recruiting or enlistment service of the United States to the injury of the service of the United States, even if the government is unable to prove that a single person was induced by such acts not to enlist when otherwise he would have enlisted. *U. S. v. Pierce*, 245 Fed. 878.

Attempt.—It has been held that willfully attempting to cause mutiny or disloyalty is punishable under this section. The attempt need not be successful to constitute an offense. *U. S. v. Traftt*, 249 Fed. 919.

But it has also been held that to sustain the charge of "willfully obstructing the recruiting or enlistment service of the United States to the injury of the service of the United States" actual obstruction and injury must be proven, not mere attempts to obstruct. The Espionage Act does not create the crime of attempting to obstruct, but only the crime of actual obstruction, and when causing injury to the service. *U. S. v. Hall*, 248 Fed. 150.

Sufficiency of indictment.—In *U. S. v. Schaefer*, 248 Fed. 290, it was held that an indictment for making false reports and statements with intent to promote the success of the enemies of the United States was not demurrable. The court said: "The point made is that the acts charged here are not acts of the kind and character condemned by the law, in that they 'are not such as constitute the making and conveying of false reports and statements with the intent to promote the success of the enemies of the United States,' and are not such as to constitute the offense of 'obstructing recruiting and enlistment,' and the like. All of which need now be said is that the act of Congress of June 15, 1917, brands as a crime reports and statements made with the intent indicated, and as equally criminal with obstructing recruiting and the like, and this indictment charges these defendants with the commission of these acts. Whether what they did was in legal intent and effect what they are charged with doing is a trial question, not a question of pleadings."

In *U. S. v. Pierce*, 245 Fed. 888, a motion for a bill of particulars to an indictment drawn under the section was denied.

SEC. 4. [Conspiracy to violate provisions of preceding sections.] If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the

object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine. [— *Stat. L.* —.]

For Penal Laws, § 37, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 5. [Harboring or concealing persons committing offenses under title.] Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this title shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or both. [— *Stat. L.* —.]

SEC. 6. [Prohibited places for purposes of title — designation by President.] The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense. [— *Stat. L.* —.]

SEC. 7. [Courts martial, etc.—limitation of jurisdiction.] Nothing contained in this title shall be deemed to limit the jurisdiction of the general courts-martial, military commissions, or naval courts-martial under sections thirteen hundred and forty-two, thirteen hundred and forty-three, and sixteen hundred and twenty-four of the Revised Statutes as amended. [— *Stat. L.* —.]

For R. S. secs. 1342, 1343, mentioned in this section, see 1 Fed. Stat. Ann. 480, 510; 1 Fed. Stat. Ann. (2d ed.) 443, 481.

Said R. S. sec. 1342, constituting the articles of war, is also given as amended, under WAR DEPARTMENT AND MILITARY ESTABLISHMENT, article 82 thereof superseding said R. S. sec. 1343.

For R. S. sec. 1624, constituting the articles for the Government of the Navy, mentioned in this section, see 1 Fed. Stat. Ann. 460; 1 Fed. Stat. Ann. (2d ed.) 418.

SEC. 8. [Territory affected by provisions of title.] The provisions of this title shall extend to all Territories, possessions, and places subject to the jurisdiction of the United States whether or not contiguous thereto, and offenses under this title when committed upon the high seas or elsewhere within the admiralty and maritime jurisdiction of the United States and outside the territorial limits thereof shall be punishable hereunder. [— *Stat. L.* —.]

SEC. 9. [National Defense Secrets Act — repeal.] The Act entitled “An Act to prevent the disclosure of national defense secrets,” approved March third, nineteen hundred and eleven, is hereby repealed. [— *Stat. L.* —.]

For the National Defense Secrets Act of March 3, 1911, ch. 226, repealed by this section, see 1912 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 936.

TITLE II.

VESSELS IN PORTS OF THE UNITED STATES.

(See SHIPPING AND NAVIGATION.)

TITLE III.

INJURING VESSELS ENGAGED IN FOREIGN COMMERCE.

(See SHIPPING AND NAVIGATION.)

TITLE IV.

INTERFERENCE WITH FOREIGN COMMERCE BY VIOLENT MEANS.

(See IMPORTS AND EXPORTS.)

TITLE V.

ENFORCEMENT OF NEUTRALITY.

(See NEUTRALITY.)

TITLE VI.

SEIZURE OF ARMS AND OTHER ARTICLES INTENDED FOR EXPORT.

(See IMPORTS AND EXPORTS.)

TITLE VII.

CERTAIN EXPORTS IN TIME OF WAR UNLAWFUL.

(See IMPORTS AND EXPORTS.)

TITLE VIII.

DISTURBANCE OF FOREIGN RELATIONS.

SEC. 1. [Disputes between foreign government and United States — false statements injuriously affecting United States.] Whoever, in relation to any dispute or controversy between a foreign government and the United States, shall willfully and knowingly make any untrue statements, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. [— *Stat. L.* —.]

SEC. 2. [Falsely pretending to be official of foreign government.] Whoever within the jurisdiction of the United States shall falsely assume or pretend to be a diplomatic or consular, or other official of a foreign government duly accredited as such to the Government of the United States with intent

to defraud such foreign government or any person, and shall take upon himself to act as such, or in such pretended character shall demand or obtain, or attempt to obtain from any person or from said foreign government, or from any officer thereof, any money, paper, document, or other thing of value, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. [— *Stat. L.* —.]

SEC. 3. [Agents of foreign government acting without prior notification.] Whoever, other than a diplomatic or consular officer or attache, shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State shall be fined not more than \$5,000, or imprisonment not more than five years, or both. [— *Stat. L.* —.]

SEC. 4. [“ Foreign government ”—meaning of term.] The words “ foreign government,” as used in this Act and in sections one hundred and fifty-six, one hundred and fifty-seven, one hundred and sixty-one, one hundred and seventy, one hundred and seventy-one, one hundred and seventy-two, one hundred and seventy-three, and two hundred and twenty of the Act of March fourth, nineteen hundred and nine, entitled “An Act of codify, revise, and amend the penal laws of the United States,” shall be deemed to include any Government, faction, or body of insurgents within a country with which the United States is at peace, which Government, faction, or body of insurgents may or may not have been recognized by the United States as a Government. [— *Stat. L.* —.]

For the Penal Laws of March 4, 1909, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 405; 7 Fed. Stat. Ann. (2d ed.) 387.

SEC. 5. [Conspiracy to injure property situated in foreign country.] If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign Government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more of such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties of the conspiracy shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy. [— *Stat. L.* —.]

TITLE IX.

PASSPORTS.

[See PASSPORTS.]

TITLE X.

COUNTERFEITING GOVERNMENT SEAL.

SEC. 1. [Use of seal to defraud.] Whoever shall fraudulently or wrongfully affix or impress the seal of any executive department, or of any bureau,

commission, or office of the United States, to or upon any certificate, instrument, commission, document, or paper of any description; or whoever, with knowledge of its fraudulent character, shall with wrongful or fraudulent intent use, buy, procure, sell, or transfer to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. [— *Stat. L. —.*]

SEC. 2. [Counterfeiting, mutilating, altering, etc., seal.] Whosoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be made, forged, counterfeited, mutilated, or altered, or shall willingly assist in falsely making, forging, counterfeiting, mutilating, or altering, the seal of any executive department, or any bureau, commission, or office of the United States, or whoever shall knowingly use, affix, or impress any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description, or whoever with wrongful or fraudulent intent shall have possession of any such falsely made, forged, counterfeited, mutilated, or altered seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. [— *Stat. L. —.*]

SEC. 3. [Naval, military or official pass or permit — counterfeiting, altering, forging, wrongful use, etc.] Whoever shall falsely make, forge, counterfeit, alter, or tamper with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with wrongful or fraudulent intent shall use or have in his possession any such pass or permit, or shall personate or falsely represent himself to be or not to be a person to whom such pass or permit has been duly issued, or shall willfully allow any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [— *Stat. L. —.*]

TITLE XI.

SEARCH WARRANTS.

SEC. 1. [By whom issued.] A search warrant authorized by this title may be issued by a judge of a United States district court, or by a judge of a State or Territorial court of record, or by a United States commissioner for the district wherein the property sought is located. [— *Stat. L. —.*]

SEC. 2. [Grounds for issuance.] A search warrant may be issued under this title upon either of the following grounds:

1. When the property was stolen or embezzled in violation of a law of the United States; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When the property was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When the property, or any paper, is possessed, controlled, or used in violation of section twenty-two of this title; in which case it may be taken on the warrant from the person violating said section, or from any person in whose possession it may be, or from any house or other place in which it is concealed. [— *Stat. L.* —.]

SEC. 3. [Affidavit of complainant prerequisite — necessity of probable cause — description.] A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched. [— *Stat. L.* —.]

SEC. 4. [Affidavits or depositions of witnesses — necessity.] The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits to take their depositions in writing and cause them to be subscribed by the parties making them. [— *Stat. L.* —.]

SEC. 5. [Contents of affidavits or depositions.] The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. [— *Stat. L.* —.]

SEC. 6. [Issuance of warrant — contents.] If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner. [— *Stat. L.* —.]

SEC. 7. [Service of warrant.] A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. [— *Stat. L.* —.]

SEC. 8. [Breaking into house to execute warrant.] The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. [— *Stat. L.* —.]

SEC. 9. [Breaking door or window to liberate person within house.] He may break open any outer or inner door or window of a house for the

purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation. [— *Stat. L.* —.]

SEC. 10. **[Time of service.]** The judge or commissioner must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. [— *Stat. L.* —.]

SEC. 11. **[Return of service.]** A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void. [— *Stat. L.* —.]

SEC. 12. **[Copy of warrant to person from whom property is taken.]** When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave it in the place where he found the property. [— *Stat. L.* —.]

SEC. 13. **[Inventory of property taken.]** The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." [— *Stat. L.* —.]

SEC. 14. **[Copy of inventory to person from whom property taken.]** The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant. [— *Stat. L.* —.]

SEC. 15. **[Grounds on which warrant was issued controverted — testimony taken.]** If the grounds on which the warrant was issued be controverted, the judge or commissioner must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and subscribed by each witness. [— *Stat. L.* —.]

SEC. 16. **[Disposition of property seized.]** If it appears that the property or paper taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the judge or commissioner must cause it to be restored to the person from whom it was taken; but if it appears that the property or paper taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on

which the warrant was issued, then the judge or commissioner shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law. [— *Stat. L.*—.]

SEC. 17. [**Filing of papers.**] The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and if he has not power to inquire into the offense in respect to which the warrant was issued he must at once file the same, together with a copy of the record of his proceedings, with the clerk of the court having power to so inquire. [— *Stat. L.* —.]

SEC. 18. [**Obstructing officer in execution of warrant.**] Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. [— *Stat. L.* —.]

SEC. 19. [**Perjury — subornation of perjury.**] Sections one hundred and twenty-five and one hundred and twenty-six of the Criminal Code of the United States shall apply to and embrace all persons making oath or affirmation or procuring the same under the provisions of this title, and such persons shall be subject to all the pains and penalties of said sections. [— *Stat. L.* —.]

For Criminal Code, §§ 125, 126, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 437, 438; 7 Fed. Stat. Ann. (2d ed.) 670 et seq.

SEC. 20. [**Maliciously procuring search warrant.**] A person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than \$1,000 or imprisoned not more than one year. [— *Stat. L.* —.]

SEC. 21. [**Abuse of process by officer.**] An officer who in executing a search warrant willfully exceeds his authority, or exercises it with unnecessary severity, shall be fined not more than \$1,000 or imprisoned not more than one year. [— *Stat. L.* —.]

SEC. 22. [**Possession or control of property or papers for purpose of aiding foreign government.**] Whoever, in aid of any foreign Government, shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than \$1,000 or imprisoned not more than two years, or both. [— *Stat. L.* —.]

SEC. 23. [**Existing laws — how affected by title.**] Nothing contained in this title shall be held to repeal or impair any existing provisions of law regulating search and the issue of search warrants. [— *Stat. L.* —.]

TITLE XII.

USE OF MAILS.

SEC. 1. [Nonmailable matter — opening letters.] Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, in violation of any of the provisions of this Act is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier: *Provided*, That nothing in this Act shall be so construed as to authorize any person other than an employe of the Dead Letter Office, duly authorized thereto, or other person upon a search warrant authorized by law, to open any letter not addressed to himself. [*— Stat. L. —.*]

For general provisions relating to the mails, see *POSTAL SERVICE, post.*

Constitutionality.—Title 12 of the Espionage Act is constitutional. *Masses Pub. Co. v. Patten*, 246 Fed. 24, *reversing* on other grounds 244 Fed. 535.

It is the clear intent of title 12 to close the United States mails to any letters or literature in furtherance of any Acts prohibited under the other titles of the statutes. *Masses Pub. Co. v. Patten*, 246 Fed. 24, *reversing* on other grounds 244 Fed. 535.

Injunction against postmaster for barring publication from mail.—In *Masses Pub. Co. v. Patten*, 246 Fed. 24, an order of the court below (see 244 Fed. 535) granting a temporary injunction against the postmaster of the city of New York for treating a publication known as "The Masses" as nonmailable under the Espionage Act was reversed, the order having been authorized by the Postmaster-General. The court held that the complainant had the burden of overcoming a presumption that the Postmaster-General's conclusion was right and that this

had not been done by a preponderance of evidence. In 245 Fed. 102 this case of the *Masses Pub. Co.* was under consideration on a motion to stay the order of injunction pending the appeal. The motion was granted.

In *Jeffersonian Pub. Co. v. Wert*, 245 Fed. 585, the suit was for a preliminary injunction to restrain a postmaster from withdrawing by order of the Postmaster-General the second class mail privileges of a publication, for matter prohibited by section 3 of title 7 of this Act. It was held that the injunction should be denied on the evidence submitted.

In *U. S. v. Sugarman*, 245 Fed. 604, the indictment was held sufficient on motion for a directed verdict.

Opinions expressed by the defendant at other times and places from those referred to in the indictment are not admissible in evidence. *U. S. v. Krafft*, 249 Fed. 919.

Willful intent as jury question.—The question of willful intent is for the jury. *U. S. v. Krafft*, 249 Fed. 919.

SEC. 2. [Matter pertaining to treason, etc.] Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, is hereby declared to be nonmailable. [*— Stat. L. —.*]

SEC. 3. [Use of mails unlawfully — punishment.] Whoever shall use or attempt to use the mails or Postal Service of the United States for the transmission of any matter declared by this title to be nonmailable, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. Any person violating any provision of this title may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. [*— Stat. L. —.*]

SEC. 4. [Return of undeliverable mail.] When the United States is at war, the Postmaster General may, upon evidence satisfactory to him that any person or concern is using the mails in violation of any of the provisions of this Act, instruct the postmaster at any post office at which mail is received addressed to such person or concern to return to the postmaster at the office at which they were originally mailed all letters or other matter so addressed, with the words, "Mail to this address undeliverable under Espionage Act" plainly written or stamped upon the outside thereof, and all such letters or other matter so returned to such postmasters shall be by them returned to the senders thereof under such regulations as the Postmaster General may prescribe. [— *Stat. L.* —.]

This was added as a new section to this title by the Act of May 16, 1918, ch. —, § 2, section 1 of which Act amended section 3, title I, of this Act, as indicated in the notes thereto, *supra*, p. 123.

TITLE XIII.

GENERAL PROVISIONS.

SEC. 1. ["United States"—territory included in term.] The term "United States" as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States. [— *Stat. L.* —.]

SEC. 2. [Courts having jurisdiction of offenses under Act — Philippine Islands — Canal Zone.] The several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas, and of conspiracies to commit such offenses, as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of said section, for the purpose of this Act, are hereby extended to the Philippine Islands, and to the Canal Zone. In such cases the district attorneys of the Philippine Islands and of the Canal Zone shall have the powers and perform the duties provided in this Act for United States attorneys. [— *Stat. L.* —.]

For Penal Laws, § 37, mentioned in the text, see 1909 Fed. Stat. Ann. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 3. [Offense committed prior to taking effect of Act.] Offenses committed and penalties, forfeitures, or liabilities, incurred prior to the taking effect hereof under any law embraced in or changed, modified, or repealed by any chapter of this Act may be prosecuted and punished, and suits and proceedings for causes arising or acts done or committed prior to the taking effect hereof may be commenced and prosecuted, in the same manner and with the same effect as if this Act had not been passed. [— *Stat. L.* —.]

SEC. 4. [Effect of partial invalidity of Act.] If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any

court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

An Act To prevent interference with the use of homing pigeons by the United States, to provide a penalty for such interference, and for other purposes.

[*Act of April 19, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Homing pigeons — interference with use by United States — prohibition.**] That it be, and it hereby is, declared to be unlawful to knowingly entrap, capture, shoot, kill, possess, or in any way detain an Antwerp, or homing pigeon, commonly called carrier pigeon, which is owned by the United States or bears a band owned and issued by the United States having thereon the letters “U. S. A.” or “U. S. N.” and a serial number. [— *Stat. L.* —.]

SEC. 2. [**Possession or detention as prima facie evidence.**] That the possession or detention of any pigeon described in section one of this Act by any person or persons in any loft, house, cage, building, or structure in the ownership or under the control of such person or persons without giving immediate notice by registered mail to the nearest military or naval authorities, shall be prima facie evidence of a violation of this Act. [— *Stat. L.* —.]

SEC. 3. [**Punishment.**] That any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than \$100, or by imprisonment for not more than six months, or by both such fine and imprisonment. [— *Stat. L.* —.]

An Act To punish the willful injury or destruction of war material, or of war premises or utilities used in connection with war material, and for other purposes.

[*Act of April 20, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Willful destruction of war material or of war premises or utilities — definitions.**] That the words “war material,” as used herein, shall include arms, armament, ammunition, live-stock, stores of clothing, food, foodstuffs, or fuel; and shall also include supplies, munitions, and all other articles of whatever description, and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States, or any associate nation, in connection with the conduct of the war.

The words "war premises," as used herein, shall include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States, or any associate nation.

The words "war utilities," as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which water or gas is being furnished, or may be furnished, to any war premises or to the military or naval forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any war premises or to the military or naval forces of the United States, or any associate nation.

The words "United States," shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

The words "associate nation," as used in this Act, shall be deemed to mean any nation at war with any nation with which the United States is at war. [— *Stat. L.* —.]

SEC. 2. [Injuring or attempting to injure war materials, etc.—punishment.] That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully injure or destroy, or shall attempt to so injure or destroy, any war material, war premises, or war utilities, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both. [— *Stat. L.* —.]

SEC. 3. [Making or attempting to make war material in a defective manner — punishment.] That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully make or cause to be made in a defective manner, or attempt to make or cause to be made in a defective manner, any war

material, as herein defined, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both. [— *Stat. L.* —.]

An Act To prevent in time of war departure from or entry into the United States contrary to the public safety.

[*Act of May 22, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[United States — entry or departure — restrictions — offenses.]** That when the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful —

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this Act;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid. [— *Stat. L.* —.]

SEC. 2. **[Necessity of passport.]** That after such proclamation as is provided for by the preceding section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the

President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport. [— *Stat. L.* —.]

SEC. 3. [Punishment.] That any person who shall willfully violate any of the provisions of this Act, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. [— *Stat. L.* —.]

SEC. 4. [Definitions—"United States"—"Person."] That the term "United States" as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used herein shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic. [— *Stat. L.* —.]

**An Act Providing for the protection of the uniform of friendly nations,
and for other purposes.**

[*Act of July 8, 1918, ch. —, — Stat. L. —.*]

[Unlawfully wearing uniform, regalia, etc., of foreign friendly State — penalty.] That it shall be unlawful for any person, with intent to deceive or mislead, within the United States or Territories, possessions, waters, or places subject to the jurisdiction of the United States, to wear any naval, military, police, or other official uniform, decoration, or regalia of any foreign State, nation, or Government with which the United States is at peace, or any uniform, decoration, or regalia so nearly resembling the same as to be calculated to deceive, unless such wearing thereof be authorized by such State, nation, or Government.

Any person who violates the provisions of this Act shall upon conviction be punished by a fine not exceeding \$300 or imprisonment for not exceeding six months, or by both such fine and imprisonment. [— *Stat. L.* —.]

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Port of Jacksonville — Immediate Transportation Privileges, 144.

Act of June 16, 1916, ch. 157, 144.

Port of Winston-Salem — Immediate Transportation Privileges, 144.

Act of July 8, 1916, ch. 234, 144.

Ports in Washington — Immediate Transportation Privileges, 144.

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Port of Noyes, Minnesota — Immediate Transportation Privileges, 145.

Act of Oct. 6, 1917, ch. —, 145.

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V. Tariff Commission, 145.*Act of Sept. 8, 1916, ch. 463, 145.**Title VII. Tariff Commission, 145.**Sec. 700. Tariff Commission — Creation — Membership — Qualifications, 145.**701. Salaries — Employees — Expenses — Offices, 146.**702. Duties of Commission, 146.**703. Information Furnished President, etc. — Reports, 147.**704. Investigation of Tariff Relations with Foreign Countries, 147.**705. Transfer of Bureaus, etc., to Commission, 147.**706. Access to Papers — Subpoenas — Testimony — Mandamus — Depositions — Witnesses — Fees, etc.—Immunity, 147.**707. Co-operation with Other Departments, 148.**708. Confidential Nature of Information Received — Investigation of Paris Economy Pact, 149.**709. Appropriation to Defray Expenses, 149.***CROSS-REFERENCE**See *WEST INDIAN ISLANDS*.**I. ARTICLES DUTIABLE AND RATES OF DUTY**

An Act To amend paragraphs one hundred and seventy-seven and one hundred and seventy-eight of an Act entitled “An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,” approved October third, nineteen hundred and thirteen, relating to the duty on sugar, molasses and other articles.

[Act of April 27, 1916, ch. 93, 39 Stat. L. 56.]

[SEC. 1.] [Sugar schedule — free entry of sugar, etc., repealed.] That the proviso of paragraph one hundred and seventy-seven of the Act entitled “An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,” approved October third, nineteen hundred and thirteen (Statutes at Large, volume thirty-eight, pages one hundred and fourteen to two hundred and two, inclusive), which proviso reads as follows: “*Provided further*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated in this paragraph shall be admitted free of duty,” be, and the same is hereby, repealed. *[39 Stat. L. 56.]*

For the Act of Oct. 3, 1913, ch. 16, § 1, schedule E, § 177 in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 77; 2 Fed. Stat. Ann. (2d ed.) 771.

SEC. 2. [Maple sugar, etc.—free entry of repealed.] That the proviso of paragraph one hundred and seventy-eight of the aforesaid Act, which proviso reads as follows: “*Provided*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated

in this paragraph shall be admitted free of duty," be, and the same is hereby, repealed. [39 Stat. L. 57.]

For the Act of Oct. 3, 1913, ch. 16, § 1, schedule E, § 178 in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 77; 2 Fed. Stat. Ann. (2d ed.) 172.

An Act To provide for the storing and cleansing of imported Mexican peas, commonly called "garbanzo."

[Act of June 28, 1916, ch. 180, 39 Stat. L. 239.]

[Imported Mexican peas — storing and cleansing — duty.] That under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican peas, commonly called garbanzo may be stored, cleaned, repacked, or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon: *Provided*, That the whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported: *And provided further*, That the compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor. [39 Stat. L. 239.]

TITLE V.—DYESTUFFS

SEC. 500. [Dyestuffs — rates of duties.] That on and after the day following the passage of this Act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States or into any of its possessions, except the Philippine Islands and the islands of Guam and Tutuila, the rates of duties which are prescribed in this title, namely:

FREE LIST

Group I. Acenaphthene, anthracene having a purity of less than twenty-five per centum, benzol, carbazol having a purity of less than twenty-five per centum, cresol, cumol, fluorene, metacresol having a purity of less than ninety per centum, methylantracene, methylnaphthalene, naphthalene having a solidifying point less than seventy-nine degrees centigrade, orthocresol having a purity of less than ninety per centum, paracresol having a purity of less than ninety per centum, pyridin, quinolin, toluol, xylol, crude coal tar, pitch of coal tar, dead or creosote oil, anthracene oil, all other distillates which on being subjected to distillation yield in the portion

distilling below two hundred degrees centigrade a quantity of tar acids less than five per centum of the original distillate, and all other products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not otherwise specially provided for in this title, shall be exempt from duty.

DUTIABLE LIST

Group II. Amidonaphthol, amidophenol, amidosalicylic acid, anilin oil, anilin salts, anthracene having a purity of twenty-five per centum or more, anthraquinone, benzoic acid, benzaldehyde, benzylchloride, benzidin, binitrobenzol, binitrochlorobenzol, binitronaphthalene, binitrotoluol, carbazol having a purity of twenty-five per centum or more, chlorophthalic acid, cumidin, dimethylanilin, dianisidin, dioxynaphthalene, diphenylamin, metacresol having a purity of ninety per centum or more, methylanthraquinone, metanilic acid, naphthalene having a solidifying point of seventy-nine degrees centigrade or above, naphthylamin, naphthol, naphthylenediamin, nitrobenzol, nitrotoluol, nitronaphthalene, nitranilin, nitrophenylenediamin, nitrotoluylenediamin, orthocresol having a purity of ninety per centum or more, paracresol having a purity of ninety per centum or more, phenol, phthalic acid, phthalic anhydride, phenylenediamin, phenyl-naphthylamin, resorcin, salicylic acid, sulphanilic acid, toluidin, tolidin, toluylenediamin, xyloidin, or any sulphoacid or sulphoacid salt of any of the foregoing, all similar products obtained, derived, or manufactured in whole or in part from the products provided for in Group I, and all distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids equal to or more than five per centum of the original distillate, all the foregoing not colors, dyes, or stains, photographic chemicals, medicinals, flavors, or explosives, and not otherwise provided for in this title, and provided for in the paragraphs of the Act of October third, nineteen hundred and thirteen, which are hereinafter specifically repealed by section five hundred and two, fifteen per centum ad valorem.

Group III. All colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, photographic chemicals, medicinals, flavors, synthetic phenolic resin, or explosives, not otherwise specially provided for in this title, when obtained, derived, or manufactured in whole or in part from any of the products provided for in Groups I and II, natural alizarin and indigo, and colors, dyes, or color lakes obtained, derived, or manufactured therefrom, thirty per centum ad valorem. [39 *Stat. L. 793.*]

The foregoing section 500, and the following sections 501, 502, constitute "Title V.—Dyestuffs" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act to increase the revenue and for other purposes." Title IX of this Act, secs. 900–902, given in *INTERNAL REVENUE, post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with these sections.

For a reference to the Act mentioned in the second paragraph of this section, see the notes to section 502, *infra*, p. 142.

SEC. 501. [**Special duties.**] That on and after the day following the passage of this Act, in addition to the duties provided in section five hundred, there shall be levied, collected, and paid upon all articles contained in

Group II a special duty of 2½ cents per pound, and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol; natural and synthetic indigo and all indigoids, whether or not obtained from indigo; and medicinals and flavors), a special duty of 5 cents per pound.

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period such special duties shall no longer be assessed, levied, or collected; but if, at the expiration of five years from the date of the passage of this Act, the President finds that there is not being manufactured or produced within the United States as much as sixty per centum in value of the domestic consumption of the articles mentioned in Groups II and III of section five hundred, he shall by proclamation so declare, whereupon the special duties imposed by this section on such articles shall no longer be assessed, levied, or collected. [39 Stat. L. 794.]

See the note to the preceding section 500 of this Act.

SEC. 502. [Repeal of certain laws.] That paragraphs twenty, twenty-one, twenty-two, and twenty-three and the words "salicylic acid" in paragraph one of Schedule A of section one of an Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, and paragraphs three hundred and ninety-four, four hundred and fifty-two, and five hundred and fourteen, and the words "carbolic" and "phthalic," in paragraph three hundred and eighty-seven of the "free list" of section one of said Act, and so much of said Act or any existing law or parts of law as may be inconsistent with this title are hereby repealed. [39 Stat. L. 794.]

See the note to section 500 of this Act, *supra*, p. 140.

For the provisions of the Tariff Act of Oct. 3, 1913, ch. 16, in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 59; 2 Fed. Stat. Ann. (2d ed.) 724.

TITLE VI.—PRINTING PAPER

SEC. 600. [Printing paper — rates of duty — former act amended.] That paragraph three hundred and twenty-two, Schedule M, and paragraph five hundred and sixty-seven of the free list of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, be amended so that the same shall read as follows:

" 322. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued above 5 cents per pound, twelve per centum ad valorem: *Provided, however,* That if any country, dependency, province, or other subdivision of government shall impose any export duty, export license fee, or other charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing

paper, wood pulp, or wood for use in the manufacture of wood pulp, there shall be imposed upon printing paper, values above 5 cents per pound, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty equal to the amount of the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either printing paper or upon an amount of wood pulp, or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

“ 567. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for the covers or bindings, not specially provided for in this section, valued at not above 5 cents per pound, decalomania paper not printed.” [39 Stat. L. 795.]

The foregoing section 600 constitutes “Title VI.—Printing Paper” of the Act of Sept. 8, 1916, ch. 463, entitled “An Act to increase the revenue, and for other purposes.” Title IX of this Act, secs. 900-902, given in INTERNAL REVENUE, *post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with this section.

For the Act of Oct. 3, 1913, ch. 16, paragraphs 322 and 567, amended by this section, see 1914 Supp. Fed. Stat. Ann. 90, 107; 2 Fed. Stat. Ann. (2d ed.) 810, 869.

II. QUALIFICATIONS, PAY, AND DUTIES OF OFFICERS

[SEC. 1.] [Customs service — pay of laborers.] * * * Section one of the Act entitled “An Act fixing the compensation of certain officials in the customs service, and for other purposes,” approved March fourth, nineteen hundred and nine, shall not prohibit the Secretary of the Treasury from fixing the pay of laborers in the customs service at a rate not exceeding \$2.50 per day if in so doing the aggregate amount paid to any person in any month does not exceed \$70. [39 Stat. L. 803.]

This is from the Deficiencies Appropriation Act of Sept. 8, 1916, ch. 464.

For the Act of March 4, 1909, ch. 314, § 1, mentioned in this section, see 2 Fed. Stat. Ann. 112. Said section 1 provided: “That the Secretary of the Treasury be, and he is hereby, authorized to increase and fix the compensation of laborers in the customs service, as he may think advisable, to a rate not exceeding eight hundred and forty dollars per annum.” This section would seem to be superseded by the plan for the reorganization of the customs service given in 2 Fed. Stat. Ann. (2d ed.) 902.

III. BOND AND WAREHOUSE SYSTEM

Joint Resolution Proposing to amend section twenty-nine hundred and seventy-one of the Revised Statutes of the United States.

[Res. of Sept. 5, 1916, ch. 441, 39 Stat. L. 725.]

[Merchandise in bonded warehouse — payment of duty for exportation.] That the limitation of section twenty-nine hundred and seventy-one of the Revised Statutes of the United States as to the period during which merchandise may remain in bonded warehouse without the payment of duty

for exportation to Mexico be, and the same hereby is, extended to all merchandise which was in bonded warehouse on August first, nineteen hundred and sixteen, and intended for exportation to Mexico, until such time as in the opinion of the Secretary of the Treasury conditions in Mexico are such as to make it commercially practicable to export the merchandise to that country. [39 Stat. L. 725.]

For R. S. sec. 2971, mentioned in this Act, see 2 Fed. Stat. Ann. 699; 2 Fed. Stat. Ann. (2d ed.) 1100.

IV. IMMEDIATE TRANSPORTATION INLAND

An Act To amend an Act entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," approved June tenth, eighteen hundred and eighty.

[Act of June 16, 1916, ch. 154, 39 Stat. L. 229.]

[Port of Jacksonville — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to the port of Jacksonville, Florida. [39 Stat. L. 229.]

For the Act of June 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

An Act For the establishment of Winston-Salem, in the State of North Carolina, as a port of delivery under the Act of June tenth, eighteen hundred and eighty, governing the immediate transportation without appraisement of dutiable merchandise.

[Act of June 16, 1916, ch. 157, 39 Stat. L. 232.]

[Port of Winston-Salem — immediate transportation privileges.] That the privileges of the seventh section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the port of Winston-Salem, in the State of North Carolina. [39 Stat. L. 232.]

For the Act of June 10, 1880, ch. 190, § 7, mentioned in this Act, see 2 Fed. Stat. Ann. 715; 2 Fed. Stat. Ann. (2d ed.) 1124.

An Act For the establishment of Northport, Chopaka, and Laurier, in the State of Washington, as ports of entry for immediate transportation without appraisement of dutiable merchandise.

[Act of July 8, 1916, ch. 234, 39 Stat. L. 354.]

[Ports in Washington — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen

hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the ports of Northport, Chopaka, and Laurier, in the State of Washington. [39 Stat. L. 354.]

For the Act of July 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

An Act For the establishment of Noyes, in the State of Minnesota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise.

[Act of Aug. 7, 1916, ch. 270, 39 Stat. L. 435.]

[Port of Noyes, Minnesota — immediate transportation privileges.] That the privileges of the first and seventh sections of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement be, and are hereby, extended to the port of Noyes, in the State of Minnesota. [39 Stat. L. 435.]

For the Act of June 10, 1880, ch. 190, §§ 1 and 7, mentioned in this Act, see 2 Fed. Stat. Ann. 712, 715; 2 Fed. Stat. Ann. (2d ed.) 1119, 1124.

An Act For the establishment of Northgate, in the State of North Dakota, as a port of entry for immediate transportation without appraisement of dutiable merchandise.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Port of Northgate, N. D. — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the port of Northgate, in the State of North Dakota. [— Stat. L. —.]

For the Act of June 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

V. TARIFF COMMISSION

TITLE VII.—TARIFF COMMISSION

SEC. 700. [Tariff Commission — creation — membership — qualifications.] That a commission is hereby created and established, to be known as the United States Tariff Commission (hereinafter in this title referred to as the commission), which shall be composed of six members, who shall be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of the same political party. In making said appointments members of different political parties shall alternate as nearly as may be practicable. The first members appointed

shall continue in office for terms of two, four, six, eight, ten, and twelve years, respectively, from the date of the passage of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of twelve years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate annually the chairman and vice chairman of the commission. No member shall engage actively in any other business, function, or employment. Any member may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy shall not impair the right of the remaining members to exercise all the powers of the commission, but no vacancy shall extend beyond any session of Congress. [39 Stat. L. 795.]

The foregoing section 700 and the following sections 701–709 constitute “Title VII.—Tariff Commission” of the Act of Sept. 8, 1916, ch. 463, entitled “An Act to increase the revenue, and for other purposes.” Title IX of this Act, secs. 900–902, given in INTERNAL REVENUE, *post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with these sections.

SEC. 701. [Salaries — employees — expenses — offices.] That each commissioner shall receive a salary of \$7,500 per year, payable monthly. The commission shall appoint a secretary, who shall receive a salary of \$5,000 per year, payable in like manner, and it shall have authority to employ and fix the compensations of such special experts, examiners, clerks, and other employees as the commission may from time to time find necessary for the proper performance of its duties.

With the exception of the secretary, a clerk to each commissioner, and such special experts as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Unless otherwise provided by law, the commission may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country. [39 Stat. L. 795.]

See the note to the preceding section 700 of this Act.

SEC. 702. [Duties of commission.] That it shall be the duty of said commission to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and

of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 703. [Information furnished President, etc.— Reports.] That the commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, and a summary of all reports made during the year. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 704. [Investigation of tariff relations with foreign countries.] That the commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 705. [Transfer of bureaus, etc., to commission.] That upon the organization of the commission, the Cost of Production Division in the Bureau of Foreign and Domestic Commerce in the Department of Commerce shall be transferred to said commission, and the clerks and employees of said division shall be transferred to and become clerks and employees of the commission, and all records, papers, and property of the said division and of the former tariff board shall be transferred to and become the records, papers, and property of the commission. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 706. [Access to papers — subpoenas — testimony — mandamus — depositions — witnesses — fees, etc.— immunity.] That for the purposes of carrying this title into effect the commission or its duly authorized agent or agents shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, and shall have power to summon witnesses, take testimony, administer oaths, and to require any person, firm, copartnership, corporation, or association

to produce books or papers relating to any matter pertaining to such investigation. Any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this title at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as herein before provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States: *Provided*, That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the commission; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. [39 Stat. L. 797.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 707. [Cooperation with other departments.] That the said commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments

of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by said commission and shall detail, from time to time, such officials and employees to said commission as he may direct. [39 Stat. L. 797.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 708. [Confidential nature of information received — investigation of Paris Economy Pact.] It shall be unlawful for any member of the United States Tariff Commission, or for any employee, agent, or clerk of said commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by said commission, or by order of said commission, or by order of any member thereof. Any offense against the provisions of this section shall be a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and such offender shall also be dismissed from office or discharged from employment. The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe. [39 Stat. L. 798.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 709. [Appropriation to defray expenses.] That there is hereby appropriated, for the purpose of defraying the expense of the establishment and maintenance of the commission, including the payment of salaries herein authorized, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$300,000 for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for each fiscal year thereafter a like sum is authorized to be appropriated. [39 Stat. L. 798.]

See the notes to section 700 of this Act, *supra*, p. 145.

DANISH WEST INDIES

See WEST INDIAN ISLANDS

DESERT LANDS

See PUBLIC LANDS

DIPLOMATIC AND CONSULAR OFFICERS

Act of July 1, 1916, ch. 208, 150.

Secretaries of Class One — Designation as Counselor, 150.

Definitions — “Diplomatic Officer” — “Counselors” — R. S. sec. 1674 Amended, 150.

Act of March 3, 1917, ch. 161, 150.

Consuls General, Consuls and Consular Agents — Qualifications — American Citizens, 150.

Consular Inspectors — Allowance for Subsistence, 151.

Act of April 15, 1918, ch. —, 151.

Salaries of Consular Assistants, 151.

CROSS-REFERENCE

Commercial Attachés, see COMMERCE DEPARTMENT.

[Secretaries of class one — designation as counselor.] * * * That the President may, whenever he considers it advisable so to do, designate and assign any secretary of class one as counselor of embassy or legation. [39 Stat. L. 252.]

This and the following paragraph of the text are from the Diplomatic and Consular Appropriation Act of July 1, 1916, ch. 208.

The Act of March 4, 1915, ch. 153, § 17, 38 Stat. L. 1184, provided that so much of R. S. sec. 4081 (see 2 Fed. Stat. Ann. 818; 3 Fed. Stat. Ann. 2d ed. 59) as related to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the co-operation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, should, on certain conditions, be repealed.

[Definitions — “diplomatic officer” — “counselors” — R. S. sec. 1674 amended.] * * * That section sixteen hundred and seventy-four of the Revised Statutes, fifth paragraph, as amended by section six of the Act approved February fifth, nineteen hundred and fifteen, entitled “An Act for the improvement of the foreign service” is hereby amended to include after the words “chargé d'affaires” the word “counselors.” [39 Stat. L. 252.]

See the note to the preceding paragraph of the text.

For R. S. sec. 1674 mentioned in this paragraph, as originally enacted, see 2 Fed. Stat. Ann. 780. For R. S. sec. 1674 mentioned in this paragraph, as amended by the Act of Feb. 5, 1915, ch. 23, § 6, see 1914 Supp. Fed. Stat. Ann. 40; 3 Fed. Stat. Ann. (2d ed.) 9.

[Consuls general, consuls and consular agents — qualifications — American citizens.] * * * That if in any case the Secretary of State deems it impracticable immediately to secure a competent vice consul who is an American citizen, he may appoint or retain as vice consul and compensate from this fund a person not an American citizen until such time as he is able to designate a competent American citizen for such post. Every

consul general, consul, and, wherever practicable, every consular agent shall be an American citizen. [39 Stat. L. 1057.]

This and the following paragraph of the text are from the Diplomatic and Consular Appropriation Act of March 3, 1917, ch. 161.

Provisions identical with those of these two paragraphs were made by the Act of July 1, 1916, ch. 208, 39 Stat. L. 261.

[Consular inspectors — allowance for subsistence.] * * * That inspectors shall be allowed actual and necessary expenses for subsistence, itemized, not exceeding an average of \$5 per day. [39 Stat. L. 1057.]

See the note to the preceding paragraph of the text.

Salaries of consular assistants. * * * That from and after the first day of July, nineteen hundred and eighteen, the salaries of consular assistants shall be at the rate of \$1,500 for the first year of continuous service, \$1,650 for the second year of continuous service, \$1,800 for the third year, and \$2,000 for the fourth year of continuous service and for each year thereafter, and section seventeen hundred and four, Revised Statutes, its amendatory Act of June eleven, eighteen hundred and seventy-four, and all other Acts inconsistent with this provision are hereby so amended. [— Stat. L. —.]

This is from the Diplomatic and Consular Service Appropriation Act of April 15, 1918, ch. —.

For R. S. sec. 1704 as amended, see 2 Fed. Stat. Ann. 796; 3 Fed. Stat. Ann. (2d ed.) 29.

DISTRICT OF COLUMBIA

Res. of May 31, 1918, No. —, 151.

Control and Regulation of Rentals of Real Estate, 151.

Act of July 8, 1918, ch. —, 152.

Requisition of Buildings for Military Purposes, 152.

Act of July 9, 1918, ch. —, 153.

Rent or Lease of Buildings for Military Purposes, 153.

Aircraft Employees in the District of Columbia, 153.

Joint Resolution To prevent rent profiteering in the District of Columbia.

[*Res. of May 31, 1918, No. —, — Stat. L. —.*]

[Control and regulation of rentals of real estate.] That until a treaty of peace shall have been definitely concluded between the United States and the Imperial German Government, unless in the meantime otherwise provided by Congress, no judicial order, decree, or judgment for the recovery of possession of any real estate in the District of Columbia, now or hereafter held or acquired by oral or written agreement of lease for one month or any longer period, or for the ejectment or dispossession of a tenant therefrom, shall be made, and all leases thereof shall continue so

long as the tenant continues to pay rent at the agreed rate and performs the other conditions of the tenancy which are not inconsistent herewith, unless the tenant has committed waste, or has been guilty on the premises of conduct which constitutes a nuisance or a breach of the peace, or other misdemeanor or crime, or that the premises are necessarily required by a landlord or bona fide purchaser for occupation either by himself or his wife, children, or dependents while he is in the employ of or officially connected with any branch of the Government, or where the property has been sold to a bona fide purchaser for his own occupancy; and where such order, decree, or judgment has been made, but not executed before the passage of this resolution, the court by which the order, decree, or judgment was made shall, if it is of the opinion that the order, decree, or judgment would not have been made if this resolution had been in force at the date of the making of the order, decree, or judgment, rescind or modify the order, decree, or judgment in such manner as the court may deem proper for the purpose of giving effect to this resolution; and all remedies, at law or in equity, of the lessor based on any provision in any oral or written agreement of lease that the same shall be determined or forfeited if the premises shall be sold are hereby suspended while this resolution shall be in force, and every purchaser shall take the conveyance of any premises subject to the rights of all tenants in possession thereof under the provisions of this resolution.

That the term "real estate" as herein used shall be construed to include any and all land, any building, any part of any building, house, or dwelling, any apartment, room, suite of rooms and every other improvement or structure whatsoever on land situated and being in the District of Columbia. [— *Stat. L.* —.]

Preceding the text of this resolution as here given was the following preamble: "Whereas by reason of the existence of a state of war, it is essential to the national security and defense, and for the successful prosecution of the war, to establish governmental control and assure adequate regulation of real estate in the District of Columbia for and during the period hereinafter set forth: Therefore be it," etc.

[Requisition of buildings for military purposes.] * * * The Secretary of War is authorized, for the official purposes of the War Department, and within the limits of the appropriations for rent made by this or any other Act making appropriations for the War Department, to requisition the use of, and take possession of, any building or any space in any building, and the appurtenances thereof, in the District of Columbia, other than a dwelling house occupied as such or a building occupied by any other branch of the United States Government, and he shall ascertain and pay just compensation for such use. If the amount of compensation so ascertained be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of such amount and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such use in the manner provided by section .

twenty-four, paragraph twenty, and section one hundred and forty-five, of the Judicial Code. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of July 8, 1918, ch. —.

For Judicial Code, § 24, par. 20, and section 145, see 1912 Supp. Fed. Stat. Ann., pp. 140, 200; 4 Fed. Stat. Ann. (2d ed.) 1059; 5 Fed. Stat. Ann. (2d ed.) 649.

[**Rent or lease of buildings for military purposes.**] That in time of war, or when war is imminent, the Secretary of War is hereby authorized, in his discretion, to rent or lease any building or part of building in the District of Columbia that may be required for military purposes. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Army Appropriation Act of July 9, 1918, ch. —.

[**Aircraft employees in the District of Columbia.**] That during the existing emergency the head of the bureau or department charged with aircraft production be, and he is hereby, authorized to employ in the District of Columbia out of appropriations made for designing, procuring, caring for, and supplying airships, engines, and property connected therewith such services as are necessary for carrying out these purposes. [— *Stat. L.* —.]

DRAFT ACT

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

DRAINAGE

See PUBLIC LANDS.

EDUCATION

Act of Feb. 23, 1917, ch. 114, 154.

Sec. 1. Vocational Education — Promotion — Cooperation with State — Appropriation, 154.

2. Agricultural Subjects — Salaries of Teachers, etc. — Amount of Appropriation — Allotment, 155.

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- Sec 1. Soldiers and Sailors — Special Instruction in District of Columbia Schools, 163.*

CROSS-REFERENCE

See *VOCATIONAL REHABILITATION*.

An Act To provide for the promotion of vocational education; to provide for cooperation with the States in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the States in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure.

[*Act of Feb. 23, 1917, ch. 114, 39 Stat. L. 929.*]

[**SEC. 1.**] [**Vocational education — promotion — cooperation with state — appropriation.**] That there is hereby annually appropriated, out of any money in the Treasury not otherwise appropriated, the sums provided in sections two, three, and four of this Act, to be paid to the respective States for the purpose of cooperating with the States in paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economic subjects; and the sum provided for in section seven for the use of the Federal Board of Vocational Education for the administration of this Act and for the purpose of making studies, investigations, and reports to aid in the organization and conduct of vocational education, which sums shall be expended as hereinafter provided. [*39 Stat. L. 929.*]

SEC. 2. [Agricultural subjects — salaries of teachers, etc.— amount of appropriation — allotment.] That for the purpose of cooperating with the States in paying the salaries of teachers, supervisors, or directors of agricultural subjects there is hereby appropriated for the use of the States, subject to the provisions of this Act, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their rural population bears to the total rural population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be necessary, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$48,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$18,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$14,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$11,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty four, the sum of \$9,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$34,000; and annually thereafter the sum of \$27,000. [39 Stat. L. 930.]

SEC. 3. [Home economics and industrial subjects — salaries of teachers, etc.— amount of appropriation — allotment.] That for the purpose of cooperating with the States in paying the salaries of teachers of trade, home economics, and industrial subjects there is hereby appropriated for the use of the States, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for

the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, the sum of \$3,000,000; and annually thereafter the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their urban population bears to the total urban population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$66,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$28,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$25,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$22,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$19,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$56,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$50,000.

That not more than twenty per centum of the money appropriated under this act for the payment of salaries of teachers of trade, home economics, and industrial subjects, for any year, shall be expended for the salaries of teachers of home economic subjects. [39 Stat. L. 930.]

SEC. 4. [Training teachers, etc.—amount of appropriation—allotment.] That for the purpose of cooperating with the States in preparing teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economic subjects there is hereby appropriated for the use of the States for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$700,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$900,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$1,000,000. Said sums shall be allotted to the States in the proportion which their population bears to the total population of the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and nineteen, nor less than \$10,000 for any fiscal year thereafter. And there is hereby appropriated

the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$32,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$90,000. [39 Stat. L. 931.]

SEC. 5. [Benefits of appropriations — how secured by state — state board.] That in order to secure the benefits of the appropriations provided for in sections two, three, and four of this Act, any State shall, through the legislative authority thereof, accept the provisions of this Act and designate or create a State board, consisting of not less than three members, and having all necessary power to cooperate, as herein provided, with the Federal Board for Vocational Education in the administration of the provisions of this Act. The State board of education, or other board having charge of the administration of public education in the State, or any State board having charge of the administration of any kind of vocational education in the State may, if the State so elect, be designated as the State board, for the purposes of this Act.

In any State the legislature of which does not meet in nineteen hundred and seventeen, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of this Act and designate or create a State board of not less than three members to act in cooperation with the Federal Board for Vocational Education, the Federal board shall recognize such local board for the purposes of this Act until the legislature of such State meets in due course and has been in session sixty days.

Any State may accept the benefits of any one or more of the respective funds herein appropriated, and it may defer the acceptance of the benefits of any one or more of such funds, and shall be required to meet only the conditions relative to the fund or funds the benefits of which it has accepted: *Provided*, That after June thirtieth, nineteen hundred and twenty, no State shall receive any appropriation for salaries of teachers, supervisors, or directors of agricultural subjects, until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers, supervisors, or directors of agricultural subjects, as provided for in this Act, and that after said date no State shall receive any appropriation for the salaries of teachers of trade, home economics, and industrial subjects until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers of trade, home economics, and industrial subjects, as provided for in this Act. [39 Stat. L. 931.]

See further the Act of Oct. 6, 1917, ch. —, *infra*, p. 163

SEC. 6. [Federal Board for Vocational Education — creation — membership — salaries — duties and powers.] That a Federal Board for Vocational Education is hereby created, to consist of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the United States Commissioner of Education, and three citizens of the United States to be appointed by the President, by and with the advice and consent of

the Senate. One of said three citizens shall be a representative of the manufacturing and commercial interests, one a representative of the agricultural interests, and one a representative of labor. The board shall elect annually one of its members as chairman. In the first instance, one of the citizen members shall be appointed for one year, one for two years, and one for three years, and thereafter for three years each. The members of the board other than the members of the Cabinet and the United States Commissioner of Education shall receive a salary of \$5,000 per annum.

The board shall have power to cooperate with State boards in carrying out the provisions of this Act. It shall be the duty of the Federal Board for Vocational Education to make, or cause to have made studies, investigations, and reports, with particular reference to their use in aiding the States in the establishment of vocational schools and classes and in giving instruction in agriculture, trades and industries, commerce and commercial pursuits, and home economics. Such studies, investigations, and reports shall include agriculture and agricultural processes and requirements upon agricultural workers; trades, industries, and apprenticeships, trade and industrial requirements upon industrial workers, and classification of industrial processes and pursuits; commerce and commercial pursuits and requirements upon commercial workers; home management, domestic science, and the study of related facts and principles; and problems of administration of vocational schools and of courses of study and instruction in vocational subjects.

When the board deems it advisable such studies, investigations, and reports concerning agriculture, for the purposes of agricultural education, may be made in cooperation with or through the Department of Agriculture; such studies, investigations, and reports concerning trades and industries, for the purposes of trade and industrial education, may be made in cooperation with or through the Department of Labor; such studies, investigations, and reports concerning commerce and commercial pursuits, for the purposes of commercial education, may be made in cooperation with or through the Department of Commerce; such studies, investigations, and reports concerning the administration of vocational schools, courses of study and instruction in vocational subjects, may be made in cooperation with or through the Bureau of Education.

The Commissioner of Education may make such recommendations to the board relative to the administration of this Act as he may from time to time deem advisable. It shall be the duty of the chairman of the board to carry out the rules, regulations, and decisions which the board may adopt. The Federal Board for Vocational Education shall have power to employ such assistants as may be necessary to carry out the provisions of this Act. [39 Stat. L. 932.]

SEC. 7. [Federal Board for Vocational Education — annual appropriation.] That there is hereby appropriated to the Federal Board for Vocational Education the sum of \$200,000 annually, to be available from and after the passage of this Act, for the purpose of making or cooperating in making the studies, investigations, and reports provided for in section six of this Act, and for the purpose of paying the salaries of the officers, the assistants, and such office and other expenses as the board may deem

necessary to the execution and administration of this Act. [39 Stat. L. 933.]

See further the Act of Oct. 6, 1917, ch. —, *infra*, p. 163.

SEC. 8. [State board — submission of plans to Federal board — annual reports.] That in order to secure the benefits of the appropriation for any purpose specified in this Act, the State board shall prepare plans, showing the kinds of vocational education for which it is proposed that the appropriation shall be used; the kinds of schools and equipment; courses of study; methods of instruction; qualifications of teachers; and, in the case of agricultural subjects the qualifications of supervisors or directors; plans for the training of teachers; and, in the case of agricultural subjects, plans for the supervision of agricultural education, as provided for in section ten. Such plans shall be submitted by the State board to the Federal Board for Vocational Education, and if the Federal board finds the same to be in conformity with the provisions and purposes of this Act, the same shall be approved. The State board shall make an annual report to the Federal Board for Vocational Education, on or before September first of each year, on the work done in the State and the receipts and expenditures of money under the provisions of this Act. [39 Stat. L. 933.]

SEC. 9. [Appropriation for home economics and industrial subjects — how expended — expense borne by State.] That the appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects and of teachers of trade, home economics, and industrial subjects shall be devoted exclusively to the payment of salaries of such teachers, supervisors, or directors having the minimum qualifications set up for the State by the State board, with the approval of the Federal Board for Vocational Education. The cost of instruction supplementary to the instruction in agricultural and in trade, home economics, and industrial subjects provided for in this Act, necessary to build a well-rounded course of training, shall be borne by the State and local communities, and no part of the cost thereof shall be borne out of the appropriations herein made. The moneys expended under the provisions of this Act, in cooperation with the States, for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, shall be conditioned that for each dollar of Federal money expended for such salaries the State or local community, or both, shall expend an equal amount for such salaries; and that appropriations for the training of teachers of vocational subjects, as herein provided, shall be conditioned that such money be expended for maintenance of such training and that for each dollar of Federal money so expended for maintenance, the State or local community, or both, shall expend an equal amount for the maintenance of such training. [39 Stat. L. 933.]

SEC. 10. [Appropriation for agricultural purposes — how expended — character of instruction — expense borne by State — qualifications of teachers.] That any State may use the appropriation for agricultural purposes, or any part thereof allotted to it, under the provisions of this Act, for the salaries of teachers, supervisors, or directors of agricultural

subjects, either for the salaries of teachers of such subjects in schools or classes or for the salaries of supervisors or directors of such subjects under a plan of supervision for the State to be set up by the State board, with the approval of the Federal Board for Vocational Education. That in order to receive the benefits of such appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects the State board of any State shall provide in its plan for agricultural education that such education shall be that which is under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and be designed to meet the needs of persons over fourteen years of age who have entered upon or who are preparing to enter upon the work of the farm or of the farm home; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement for such education in schools and classes in the State; that the amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal board as the minimum for such schools or classes in the State; that such schools shall provide for directed or supervised practice in agriculture, either on a farm provided for by the school or other farm, for at least six months per year; that the teachers, supervisors, or directors of agricultural subjects shall have at least the minimum qualifications determined for the State by the State board, with the approval of the Federal Board for Vocational Education. [39 Stat. L. 934.]

SEC. 11. [Trade, home economics and industrial subjects — character of instruction.] That in order to receive the benefits of the appropriation for the salaries of teachers of trade, home economics, and industrial subjects the State board of any State shall provide in its plan for trade, home economics, and industrial education that such education shall be given in schools or classes under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement in such State for education for any given trade or industrial pursuit; that the total amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal board, as the minimum for such schools or classes in the State; that such schools or classes giving instruction to persons who have not entered upon employment shall require that at least half of the time of such instruction be given to practical work on a useful or productive basis, such instruction to extend over not less than nine months per year and not less than thirty hours per week; that at least one-third of the sum appropriated to any State for the salaries of teachers of

trade, home economics, and industrial subjects shall, if expended, be applied to part-time schools or classes for workers over fourteen years of age who have entered upon employment, and such subjects in a part-time school or class may mean any subject given to enlarge the civic or vocational intelligence of such workers over fourteen and less than eighteen years of age; that such part-time schools or classes shall provide for not less than one hundred and forty-four hours of classroom instruction per year; that evening industrial schools shall fix the age of sixteen years as a minimum entrance requirement and shall confine instruction to that which is supplemental to the daily employment; that the teachers of any trade or industrial subject in any State shall have at least the minimum qualifications for teachers of such subject determined upon for such State by the State board, with the approval of the Federal Board for Vocational Education: *Provided*, That for cities and towns of less than twenty-five thousand population, according to the last preceding United States census, the State board, with the approval of the Federal Board for Vocational Education, may modify the conditions as to the length of course and hours of instruction per week for schools and classes giving instruction to those who have not entered upon employment, in order to meet the particular needs of such cities and towns. [39 Stat. L. 934.]

SEC. 12. [Training of teachers, etc.—character of instruction] That in order for any State to receive the benefits of the appropriation in this Act for the training of teachers, supervisors, or directors of agricultural subjects, or of teachers of trade, industrial or home economics subjects, the State board of such State shall provide in its plan for such training that the same shall be carried out under the supervision of the State board; that such training shall be given in schools or classes under public supervision or control; that such training shall be given only to persons who have had adequate vocational experience or contact in the line of work for which they are preparing themselves as teachers, supervisors, or directors, or who are acquiring such experience or contact as a part of their training; and that the State board, with the approval of the Federal board, shall establish minimum requirements for such experience or contact for teachers, supervisors, or directors of agricultural subjects and for teachers of trade, industrial, and home economics subjects; that not more than sixty per centum nor less than twenty per centum of the money appropriated under this Act for the training of teachers of vocational subjects to any State for any year shall be expended for any one of the following purposes: For the preparation of teachers, supervisors, or directors of agricultural subjects, or the preparation of teachers of trade and industrial subjects, or the preparation of teachers of home economics subjects. [39 Stat. L. 935.]

SEC. 13. [Custodian for appropriations.] That in order to secure the benefits of the appropriations for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, or for the training of teachers as herein provided, any State shall, through the legislative authority thereof, appoint as custodian for said appropriations its State Treasurer, who shall

receive and provide for the proper custody and disbursements of all money paid to the State from said appropriations. [39 Stat. L. 935.]

SEC. 14. [Ascertainment of amount of appropriation due each state — certification — payment — disbursements by State boards.] That the Federal Board for Vocational Education shall annually ascertain whether the several States are using, or are prepared to use, the money received by them in accordance with the provisions of this Act. On or before the first day of January of each year the Federal Board for Vocational Education shall certify to the Secretary of the Treasury each State which has accepted the provisions of this Act and complied therewith, certifying the amounts which each State is entitled to receive under the provisions of this Act. Upon such certification the Secretary of the Treasury shall pay quarterly to the custodian for vocational education of each State the moneys to which it is entitled under the provisions of this Act. The moneys so received by the custodian for vocational education for any State shall be paid out on the requisition of the State board as reimbursement for expenditures already incurred to such schools as are approved by said State board and are entitled to receive such moneys under the provisions of this Act. [39 Stat. L. 935.]

SEC. 15. [Fund allotted to state partially unexpended — effect.] That whenever any portion of the fund annually allotted to any State has not been expended for the purpose provided for in this Act, a sum equal to such portion shall be deducted by the Federal board from the next succeeding annual allotment from such fund to such State. [39 Stat. L. 936.]

SEC. 16. [Withholding allotment of moneys from state — when warranted — appeal.] That the Federal Board for Vocational Education may withhold the allotment of moneys to any State whenever it shall be determined that such moneys are not being expended for the purposes and under the conditions of this Act.

If any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States, and if the Congress shall not direct such sum to be paid it shall be covered into the Treasury. [39 Stat. L. 936.]

SEC. 17. [Portion of moneys paid state diminished or lost — replacement by state — prohibition of use of federal appropriation for certain purposes.] That if any portion of the moneys received by the custodian for vocational education of any State under this Act, for any given purpose named in this Act, shall, by any action or contingency, be diminished or lost, it shall be replaced by such State, and until so replaced no subsequent appropriation for such education shall be paid to such State. No portion of any moneys appropriated under this Act for the benefit of the States shall be applied, directly or indirectly, to the purchase, erection, preservation, or repair of any building or buildings or equipment, or for the purchase or rental of lands, or for the support of any religious or privately owned or conducted school or college. [39 Stat. L. 936.]

SEC. 18. [Annual report by Federal Board.] That the Federal Board for Vocational Education shall make an annual report to Congress, on or before December first, on the administration of this Act and shall include in such report the reports made by the State boards on the administration of this Act by each State and the expenditure of the money allotted to each State. [39 Stat. L. 936.]

[SEC. 1.] [Vocational Education Act — appropriation — for what available — failure of state to accept provisions of act.] * * * The appropriation provided by section seven of the Act creating the Federal Board for Vocational Education, approved February twenty-third, nineteen hundred and seventeen, is also made available for printing and binding, law books, books of reference and periodicals, and postage on foreign mail.

In any State the legislature of which met in nineteen hundred and seventeen and failed for any reason to accept the provisions of the vocational education Act, as provided in section five of said Act, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of said Act and designate or create a State board of not less than three members to act in cooperation with the Federal Board for Vocational Education and shall designate the State treasurer as custodian for all moneys allotted to that State under said Act, the Federal board shall, if such legislature took no adverse action on the acceptance of said Act in nineteen hundred and seventeen, recognize such State board for the purposes of said Act until the legislature of that State meets in regular session in due course and has been in session sixty days. [— Stat. L. —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

The Act of Feb. 23, 1917, ch. 114, §§ 7 and 5, mentioned in the text, is given *supra*, pp. 158, 157.

[SEC. 1.] [Soldiers and sailors — special instruction in District of Columbia schools.] * * * Soldiers and sailors of the United States not residents of the District of Columbia who are on duty at stations adjacent to the District of Columbia shall be admitted for special instruction to the day schools and night schools of the District of Columbia without payment of tuition. [— Stat. L. —.]

This is from the Deficiencies Appropriations Act of March 28, 1918, ch. —.

EIGHT HOUR DAY

See RAILROADS

ELECTRICITY

Act of July 9, 1918, ch. —, 164.

Chapter XXIV.

- Sec. 1. Condemnation of Property for Generating Electric Energy, 164.*
- 2. Submission of Plans — Approval — Public Lands — Bond, 164.*
- 3. Possession and Use of Property and Rights, 165.*
- 4. Termination of War — Effect, 165.*

CHAPTER XXIV.

[SEC. 1.] [Condemnation of property for generating electric energy.]

That during the pendency of the present war, any person, association, or corporation, for the purpose of furnishing electric power to the United States or to persons, associations, or corporations engaged in the manufacture of ships, explosives, or munitions of war, or other articles and things for the use of the United States or its allies, upon compliance with the conditions hereinafter set forth, may institute proceedings in any district court of the United States or in any court of any State having jurisdiction of the property to be condemned, for the acquirement by condemnation of any land, the temporary use thereof, or other interest therein, or right pertaining thereto, required for the location or construction of any line or lines for the transmission of electric power for the operation of any plants which are or may be employed in the production of the articles and things hereinbefore mentioned: *Provided*, That nothing herein shall be construed to authorize the appropriation of any property already devoted to such use. That proceedings for the condemnation of property required for the generation and transmission of such electric power shall be prosecuted in accordance with the procedure prescribed for the condemnation of property in the State wherein the proceedings may be instituted. [— *Stat. L. —.*]

The foregoing section 1 and the following sections 2-4 constitute chapter XXIV of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Submission of plans — approval — public lands — bond.]

That before any person, association, or corporation, furnishing or to furnish electric power for the purposes mentioned in section one of this Act, shall have the right to institute proceedings for condemnation, they shall submit to the Secretary of War a full and complete statement of the plan for furnishing power and the nature and extent of the easements or property which they desire to acquire under condemnation proceedings, for the purposes stated in the preceding section. If the Secretary of War approves such plan and finds that the construction or extension of such facilities for the generation or transmission of power and that the condemnation herein authorized is necessary to increase the supply of power for the objects and purposes stated in section one of this Act, then such person, association, or corporation shall, upon the approval of such plan by the Secretary of War, have the right to construct, maintain, and

operate the facilities described in such plan, and may cause proceedings to be instituted in any court having jurisdiction thereof for the acquirement by condemnation of any lands, the temporary use thereof, or other interest therein, or right pertaining thereto, as may be needed for the construction, maintenance, and operation of such facilities: *Provided*, That nothing in this section shall be construed as authorizing any rights in any public lands of the United States, or in any waters of the United States except such as may be necessary to build such transmission lines along or across said waters as may be approved by the Secretary of War: *Provided further*, That the Secretary of War may, prior to granting his approval as above set forth, require such person, association, or corporation to file with him a bond, in an amount and with a surety or sureties satisfactory to him, conditioned upon the prompt construction of the proposed facilities and the diligent maintenance and operation of the same to the satisfaction of the Secretary of War during the present war. [— *Stat. L.* —.]

SEC. 3. [Possession and use of property and rights.] That any person, association, or corporation having secured the approval of the Secretary of War and filed a petition for condemnation as herein provided may, upon filing with the court in which such petition is filed a bond to secure payment of just compensation to the owners of property taken, in a form and an amount and with a surety or sureties approved by said court after such notice and such hearing as the court may prescribe, have the right of immediate possession and use of such property or rights. [— *Stat. L.* —.]

SEC. 4. [Termination of war — effect.] That no plan for the construction or extension of any facilities shall be submitted to or approved by the Secretary of War hereunder after the existing state of war between the United States and its enemies shall have terminated, and the fact of such termination shall be ascertained and proclaimed by the President, but such termination of the existing state of war so ascertained and proclaimed shall not interfere with the condemnation of any land or other property or rights needed for the construction, maintenance, and operation of any facilities approved hereunder by the Secretary of War before such proclamation: *Provided, however*, That the Secretary of War may upon such termination of the existing state of war and prior to the entry of judgment in any condemnation proceeding hereunder and the commencement of construction or extension of the proposed facilities revoke any approval given hereunder to the plan for such proposed facilities: *Provided further*, That nothing in this chapter shall be construed as granting any franchise to utilize such facilities after the termination of the existing state of war.

That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

EMINENT DOMAIN

Act of July 2, 1917, ch. —, 166.

Lands for Military Purposes — Condemnation — Nitrate Plants — Munition Plants, 166.

Act of July 9, 1918, ch. —, 167.

Chapter XV.

Sec. 8. Condemnation of Timber, Products and Equipment — Former Act Extended, 167.

An Act To authorize condemnation proceedings of lands for military purposes.

[Act of July 2, 1917, ch. —, — Stat. L. —.]

[Lands for military purposes — condemnation — nitrate plants — munition plants.] That hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase or enter into a contract for the use of the same at such price without further delay: *Provided further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of land and the interest and rights pertaining thereto required for the above mentioned purposes: *And provided further*, That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, and the provision of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended during the period of the existing emergency. [*— Stat. L. —. As amended by — Stat. L. —.*]

This Act was amended by the Act of April 11, 1918, ch. —, by adding after the word "camps" where it first appears the following: "and for the construction and operation of plants for the production of nitrates and other compounds and the

manufacture of explosives and other munitions of war and for the development and transmission of power for the operation of such plants," causing it to read as here given.

For R. S. sec. 355, mentioned in the text, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

See the following paragraph of the text.

SEC. 8. [Condemnation of timber, products and equipment—former Act extended.] That the Act entitled "An Act to authorize condemnation proceedings of lands for military purposes," approved July second, nineteen hundred and seventeen, as amended by an Act approved April eleventh, nineteen hundred and eighteen, be, and the same is hereby, amended, and its provisions in all respects together with all its privileges and benefits are hereby extended to the right of condemnation of standing or fallen timber, sawmills, camps, machinery, logging roads, rights of way, equipment, materials, supplies, and any works, property, or appliances suitable for the effectual production of such lumber and timber products, for the Army, Navy, United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation. That the right to institute such condemnation proceedings is hereby conferred upon the Secretary of War, the Secretary of the Navy, and the Chairman of the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, individually or collectively. Such right of condemnation shall be exercised by such officials only for the purpose of obtaining such property when needed for the production, manufacture, or building aircraft, dry-docks, or vessels, their apparel or furniture, for housing of Government employees in connection with the Army, Navy, or the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, and for the procurement of materials and equipment for aircraft, dry-docks and vessels. The jurisdiction of such condemnation proceedings is hereby vested in the District Courts of the United States, where the property which is sought to be condemned or any part thereof is located or situated, regardless of the value of the same.

And the President is hereby authorized through any department or the United States Shipping Board or said Fleet Corporation to sell and dispose of any lands or interests in real estate acquired for the production of lumber and timber products, and to sell any logs, manufactured or partly manufactured or otherwise procured for the Army, Navy, or United States Shipping Board Emergency Fleet Corporation, or resulting from such manufacture or procurement, either to individuals, corporations or foreign states or governments, at such price as he shall determine acting through his above representatives selling or disposing of the same, and the proceeds of such sale shall be returned to the appropriations which bore the expense of such procurement. [— *Stat. L.* —.]

This is a part of section 8 of chapter XV of the Army Appropriation Act of July 9, 1918, ch. —.

The Act of July 2, 1917, ch. —, mentioned in this section, is given in the preceding paragraph of the text.

ESPIONAGE ACT

See CRIMINAL LAW

ESTATE TAX

See INTERNAL REVENUE

ESTIMATES, APPROPRIATIONS AND REPORTS

Act of July 1, 1916, ch. 209, 168.

Sec. 4. Annual Book of Estimates—Submission of Information—Method, 168.

CROSS-REFERENCE

Estimates and Reports as to Indian Affairs, see INDIANS.

SEC. 4. [Annual book of estimates—submission of information—method.] That the information required in connection with estimates for general or lump-sum appropriations by section ten of the sundry civil appropriation Act, approved August first, nineteen hundred and fourteen, shall be submitted hereafter according to uniform and concise methods which shall be prescribed by the Secretary of the Treasury, but with reference to estimates for pay of mechanics and laborers there shall be submitted in detail only the ratings and trades and the rates per diem paid or to be paid. [39 Stat. L. 336.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of Aug. 1, 1914, ch. 223, § 10, mentioned in the text, which amended the Act of Aug. 24, 1912, ch. 355, § 6, see 1914 Supp. Fed. Stat. Ann. 49; 3 Fed. Stat. Ann. (2d ed.) 136.

EXCESS PROFITS TAX

See INTERNAL REVENUE

EXECUTIVE DEPARTMENTS

Act of Oct. 6, 1917, ch. —, 169.

Sec. 6. *Transfer of Employees from One Department to Another — Shipping Board as Government Establishment*, 169.

7. *Compensation of Transferred Employees*, 169.

Act of March 28, 1918, ch. —, 170.

Sec. 2. "Governmental Establishment" — *District of Columbia*, 170.

Act of May 20, 1918, ch. — ("Overman Bill"), 170.

Sec. 1. *Redistribution of Functions Among Executive Agencies — Duration of Act — Limited to Present War*, 170.

2. *Consolidation of Bureaus, etc. — Transfer of Personnel, etc.*, 170.

3. *Agency for Control of Aeroplanes, etc.*, 171.

4. *Availability of Appropriations*, 171.

5. *Abolition of Agencies, etc. — Report*, 171.

6. *Repeal of Conflicting Laws — Termination of Act — Effect*, 171.

Act of July 3, 1918, ch. —, 171.

Sec. 1. *Employees — Detail to Office of President*, 171.

4. *Purchase of Typewriters*, 172.

SEC. 6. [Transfer of employees from one department to another — shipping board as government establishment.] That section five of the Act of June twenty-second, nineteen hundred and six, prohibiting the transfer of employees from one executive department to another, shall apply with equal force and effect to the transfer of employees from executive departments to independent establishments and vice versa and to the transfer of employees from one independent establishment to another: *Provided*, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government establishment for the purposes of this section. [— *Stat. L.* —.]

This section 6 and the following section 7 are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

For the Act of June 22, 1906, ch. 3514, § 5, mentioned in this section see 1909 Supp. Fed. Stat. Ann. 129; 3 Fed. Stat. Ann. (2d ed.) 262.

SEC. 7. [Compensation of transferred employees.] That no civil employee in any of the executive departments or other Government establishments, or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment, shall be employed hereafter and paid from a lump-sum appropriation in any other executive department or other Government establishment at an increased rate of compensation. And no civil employee in any of the executive departments or other Government establishments or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment and who may be employed in another executive department or other Government establishment shall be granted an increase in compensation within the period of one year following such reemployment: *Provided*, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government establish-

ment for the purposes of this section: *Provided further*, That this section shall not be construed to repeal section five of the Act of June twenty-second, nineteen hundred and six, which prohibits the transfer of employees from one department to another. [— *Stat. L.* —.]

See the note to the preceding § 6 of this Act.

For the Act of June 22, 1906, ch. 5514, § 5, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 129; 3 Fed. Stat. Ann. (2d ed.) 263.

SEC. 2. [“ **Governmental Establishment** ” — **District of Columbia.**] That all branches of the government of the District of Columbia shall be considered a governmental establishment for the purposes of section seven of the deficiency appropriation Act approved October sixth, nineteen hundred and seventeen. [— *Stat. L.* —.]

This is from the Deficiency Appropriation Act of March 28, 1918, ch. ——. The Act of Oct. 6, 1917, ch. —, § 7, is given in the preceding paragraph of the text.

An Act Authorizing the President to coordinate or consolidate executive bureaus, agencies, and offices, and for other purposes, in the interest of economy and the more efficient concentration of the Government.

[*Act of May 20, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Redistribution of functions among executive agencies — duration of Act — limited to present war.] That for the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the land and naval forces the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this Act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be filed with the head of the department affected and constitute a public record: *Provided*, That this Act shall remain in force during the continuance of the present war and for six months after the termination of the war by the proclamation of the treaty of peace, or at such earlier time as the President may designate: *Provided further*, That the termination of this Act shall not affect any act done or any right or obligation accruing or accrued pursuant to this Act and during the time that this Act is in force: *Provided further*, That the authority by this Act granted shall be exercised only in matters relating to the conduct of the present war. [— *Stat. L.* —.]

This is known as the “Overman Bill.”

SEC. 2. [Consolidation of bureaus, etc.—transfer of personnel, etc.] That in carrying out the purposes of this Act the President is authorized

to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto. [— *Stat. L.* —.]

SEC. 3. [**Agency for control of aeroplanes, etc.**] That the President is further authorized to establish an executive agency which may exercise such jurisdiction and control over the production of aeroplanes, aeroplane engines, and aircraft equipment as in his judgment may be advantageous; and, further, to transfer to such agency, for its use, all or any moneys heretofore appropriated for the production of aeroplanes, aeroplane engines, and aircraft equipment. [— *Stat. L.* —.]

SEC. 4. [**Availability of appropriations.**] That for the purpose of carrying out the provisions of this Act, any moneys heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said function. [— *Stat. L.* —.]

SEC. 5. [**Abolition of agencies, etc.—report.**] That should the President, in redistributing the functions among the executive agencies as provided in this Act, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper. [— *Stat. L.* —.]

SEC. 6. [**Repeal of conflicting laws—termination of Act—effect.**] That all laws or parts of laws conflicting with the provisions of this Act are to the extent of such conflict suspended while this Act is in force.

Upon the termination of this Act all executive or administrative agencies, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this Act to the contrary notwithstanding. [— *Stat. L.* —.]

[SEC. 1.] [**Employees—detail to office of President.**] * * * That employees of the executive departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States for such temporary assistance as may be necessary. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

Provisions identical with those of this paragraph have appeared in similar Acts for prior years. See 3 Fed. Stat. Ann. (2d ed.) 263.

SEC. 4. [Purchase of typewriters.] That no part of any money appropriated by this or any other Act shall be used during the fiscal year nineteen hundred and nineteen for the purchase of any typewriting machine at a price in excess of the lowest price paid by the Government of the United States for the same make and substantially the same model of machine during the fiscal year nineteen hundred and seventeen; such price shall include the value of any typewriting machine or machines given in exchange, but shall not apply to special prices granted on typewriting machines used in schools of the District of Columbia or of the Indian Service, the lowest of which special prices paid for typewriting machines shall not be exceeded in future purchases for such schools: *Provided*, That in construing this section the Commissioner of Patents shall advise the Comptroller of the Treasury as to whether the changes in any typewriter are of such structural character as to constitute a new machine not within the limitations of this section. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

EXPLOSIVES

Act of Oct. 6, 1917, ch. —, 173.

- Sec. 1. *Explosives — Manufacture, Distribution, Storage, etc., During War, 173.*
2. *"Explosive" and "Explosives" Defined — Application of Act, 173.*
3. *"Ingredients" Defined, 173.*
4. *"Person" Defined, 173.*
5. *Possession, Transfer, etc., of Explosives Forbidden — Exceptions — Use at Mines, Quarries, etc., 173.*
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7. *License Required for Manufacture, 174.*
8. *Disclosures as to Business of Licensee or Applicant — Exceptions, 174.*
9. *Records of Sales, etc., 174.*
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20. *Fires, Explosions, etc., Where Explosives Are Stored, etc. — Investigations — Authority, 177.*

Sec. 21. Agents to Carry Out Provisions of Act, 177.

22. Appropriation, 178.

Act of July 1, 1918, ch. —, 178.

Sec. 1. Cancellation of License, 178.

An Act To prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [**Explosives — manufacture, distribution, storage, etc., during war.**] That when the United States is at war it shall be unlawful to manufacture, distribute, store, use, or possess powder, explosives, blasting supplies, or ingredients thereof, in such manner as to be detrimental to the public safety, except as in this Act provided. [*— Stat. L. —.*]

SEC. 2. [**“Explosive” and “explosives” defined — application of Act.**] That the words “explosive” and “explosives” when used herein shall mean gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses, detonators, and other detonating agents, smokeless powders, and any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of, or any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb, but shall not include small arms or shotgun cartridges: *Provided*, That nothing herein contained shall be construed to prevent the manufacture, under the authority of the Government, of explosives for, their sale to or their possession by, the military or naval service of the United States of America. [*— Stat. L. —.*]

SEC. 3. [**“Ingredients” defined.**] That the word “ingredients” when used herein shall mean the materials and substances capable by combination of producing one or more of the explosives mentioned in section one hereof. [*— Stat. L. —.*]

SEC. 4. [**“Person” defined.**] That the word “person,” when used herein, shall include States, Territories, the District of Columbia, Alaska, and other dependencies of the United States, and municipal subdivisions thereof, individual citizens, firms, associations, societies and corporations of the United States and of other countries at peace with the United States. [*— Stat. L. —.*]

SEC. 5. [**Possession, transfer, etc., of explosives forbidden — exceptions — use at mines, quarries, etc.**] That from and after forty days after the passage and approval of this Act no person shall have in his possession or purchase, accept, receive, sell, give, barter or otherwise dispose of or pro-

cure explosives, or ingredients, except as provided in this Act: *Provided*, That the purchase or possession of said ingredients when purchased or held in small quantities and not used or intended to be used in the manufacture of explosives are not subject to the provisions of this Act: *Provided further*, That the superintendent, foreman, or other duly authorized employee, at a mine, quarry, or other work, may, when licensed so to do, sell or issue, to any workman under him, such an amount of explosives, or ingredients, as may be required by that workman in the performance of his duties, and the workman may purchase or accept the explosives, or ingredients, so sold or issued, but the person so selling or issuing same shall see that any unused explosives, or ingredients, are returned, and that no explosives, or ingredients, are taken by the workman to any point not necessary to the carrying on of his duties. [— *Stat. L.* —.]

SEC. 6. [Application of act to explosives, etc., being transported.] That nothing contained herein shall apply to explosives or ingredients while being transported upon vessels or railroad cars in conformity with statutory law or Interstate Commerce Commission rules. [— *Stat. L.* —.]

For provisions relating to the transportation of explosives, see CARRIERS, 1 Fed. Stat. Ann. 719, 2 Fed. Stat. Ann. (2d ed.) 17; PENAL LAWS, 1909 Supp. Fed. Stat. Ann. 470, 7 Fed. Stat. Ann. (2d ed.) 857.

SEC. 7. [License required for manufacture.] That from and after forty days after the passage of this Act no person shall manufacture explosives unless licensed so to do, as hereinafter provided. [— *Stat. L.* —.]

SEC. 8. [Disclosures as to business of licensee or applicant — exceptions.] That any licensee or applicant for license hereunder shall furnish such information regarding himself and his business, so far as such business relates to or is connected with explosives or ingredients at such time and in such manner as the Director of the Bureau of Mines, or his authorized representative, may request, excepting that those who have been or are at the time of the passage of this Act regularly engaged in the manufacture of explosives shall not be compelled to disclose secret processes, costs, or other data unrelated to the distribution of explosives. [— *Stat. L.* —.]

SEC. 9. [Records of sales, etc.] That from and after forty days after the passage and approval of this Act every person authorized to sell, issue, or dispose of explosives shall keep a complete itemized and accurate record, showing each person to whom explosives are sold, given, bartered, or to whom or how otherwise disposed of, and the quantity and kind of explosives, and the date of each such sale, gift, barter, or other disposition, and this record shall be sworn to and furnished to the Director of the Bureau of Mines, or his authorized representatives, whenever requested. [— *Stat. L.* —.]

SEC. 10. [Licenses — character.] That the Director of the Bureau of Mines is hereby authorized to issue licenses as follows:

(a) Manufacturer's license, authorizing the manufacture, possession, and sale of explosives or ingredients.

(b) Vendor's license, authorizing the purchase, possession, and sale of explosives or ingredients.

(c) Purchaser's license, authorizing the purchase and possession of explosives and ingredients.

(d) Foreman's license, authorizing the purchase and possession of explosives and ingredients, and the sale and issuance of explosives and ingredients to workmen under the proviso to section five above.

(e) Exporter's license, authorizing the licensee to export explosives, but no such license shall authorize exportation in violation of any proclamation of the President issued under any Act of Congress.

(f) Importer's license, authorizing the licensee to import explosives.

(g) Analyst's, educator's, investor's, and investigator's licenses authorizing the purchase, manufacture, possession, testing, and disposal of explosives and ingredients. [— *Stat. L.* —.]

SEC. 11. [Licenses — to whom issued — citizenship or loyalty of licensee — revocation — appeal.] That the Director of the Bureau of Mines shall issue licenses, upon application duly made, but only to citizens of the United States of America, and to the subjects or citizens of nations that are at peace with them, and to corporations, firms, and associations thereof, and he may, in his discretion, refuse to issue a license, when he has reason to believe, from facts of which he has knowledge or reliable information, that the applicant is disloyal or hostile to the United States of America, or that, if the applicant is a firm, association, society, or corporation, its controlling stockholders or members are disloyal or hostile to the United States of America. The director may, when he has reason to believe on like grounds that any licensee is so disloyal or hostile, revoke any license issued to him. Any applicant to whom a license is refused or any licensee whose license is revoked by the said director may, at any time within thirty days after notification of the rejection of his application or revocation of his license, apply for such license or the cancellation of such revocation to the Council of National Defense, which shall make its order upon the director either to grant or to withhold the license. [— *Stat. L.* —.]

SEC. 12. [Application for license— contents — where made — issuance — fees — records — removal of officers.] That any person desiring to manufacture, sell, export, import, store, or purchase explosives or ingredients, or to keep explosives or ingredients in his possession, shall make application for a license, which application shall state, under oath, the name of the applicant; the place of birth; whether native born or naturalized citizen of the United States of America; if a naturalized citizen, the date and place of naturalization; business in which engaged; the amount and kind of explosives or ingredients which during the past six months have been purchased, disposed of, or used by him; the amount and kind of explosives or ingredients now on hand; whether sales, if any, have been made to jobbers, wholesalers, retailers, or consumers; the kind of license to be issued, and the kind and amount of explosives or ingredients to be authorized by the license; and such further information as the Director of the Bureau of Mines may, by rule, from time to time require.

Applications for vendor's, purchaser's, or foreman's licenses shall be made to such officers of the State, Territory, or dependency having juris-

diction in the district within which the explosives or ingredients are to be sold or used, and having the power to administer oaths as may be designated by the Director of the Bureau of Mines, who shall issue the same in the name of such director. Such officers shall be entitled to receive from the applicant a fee of 25 cents for each license issued. They shall keep an accurate record of all licenses issued in manner and form to be prescribed by the Director of the Bureau of Mines, to whom they shall make reports from time to time as may be by rule issued by the director required. The necessary blanks and blank records shall be furnished to such officers by the said director. Licensing officers shall be subject to removal for cause by the Director of the Bureau of Mines, and all licenses issued by them shall be subject to revocation by the director as provided in section eleven. [— *Stat. L.* —.]

SEC. 13. [Explosives inspector — appointment — duties — salary — detail — additional employees.] That the President, by and with the advice and consent of the Senate, may appoint in each State and in Alaska an explosives inspector, whose duty it shall be, under the direction of the Director of the Bureau of Mines, to see that this Act is faithfully executed and observed. Each such inspector shall receive a salary of \$2,400 per annum. He may at any time be detailed for service by said director in the District of Columbia or in any State, Territory, or dependency of the United States. All additional employees required in carrying out the provisions of this Act shall be appointed by the Director of the Bureau of Mines, subject to the approval of the Secretary of the Interior. [— *Stat. L.* —.]

SEC. 14. [Misrepresentation as to existence or nature of license — refusal to exhibit license.] That it shall be unlawful for any person to represent himself as having a license issued under this Act, when he has not such a license, or as having a license different in form or in conditions from the one which he in fact has, or without proper authority make, cause to be made, issue or exhibit anything purporting or pretending to be such license, or intended to mislead any person into believing it is such a license, or to refuse to exhibit his license to any peace officer, Federal or State, or representative of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 15. [Divulging information obtained from license or application.] That no inspector or other employee of the Bureau of Mines shall divulge any information obtained in the course of his duties under this Act regarding the business of any licensee, or applicant for license, without authority from the applicant for license or from the Director of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 16. [Marking premises on which explosives, etc., are stored, etc.] That every person authorized under this Act to manufacture or store explosives or ingredients shall clearly mark and define the premises on which his plant or magazine may be and shall conspicuously display thereon the words "Explosives — Keep Off." [— *Stat. L.* —.]

SEC. 17. [Plants or premises, persons allowed in or upon — discharge of firearms, bombs, etc.] That no person, without the consent of the owner or his authorized agents, except peace officers, the Director of the Bureau of Mines and persons designated by him in writing, shall be in or upon any plant or premises on which explosives are manufactured or stored, or be in or upon any magazine premises on which explosives are stored; nor shall any person discharge any firearms or throw or place any explosives or inflammable bombs at, on, or against any such plant or magazine premises, or cause the same to be done. [— *Stat. L.* —.]

SEC. 18. [Rules and regulations.] That the Director of the Bureau of Mines is hereby authorized to make rules and regulations for carrying into effect this Act, subject to the approval of the Secretary of the Interior. [— *Stat. L.* —.]

SEC. 19. [Violation of act, rules, or regulations — penalty.] That any person violating any of the provisions of this Act, or any rules or regulations made thereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$5,000 or by imprisonment not more than one year, or by both such fine and imprisonment. [— *Stat. L.* —.]

SEC. 20. [Fires, explosions, etc., where explosives are stored, etc.— investigations — authority.] That the Director of the Bureau of Mines is hereby authorized to investigate all explosions and fires which may occur in mines, quarries, factories, warehouses, magazines, houses, cars, boats, conveyances, and all places in which explosives or the ingredients thereof are manufactured, transported, stored, or used, and shall, in his discretion, report his findings, in such manner as he may deem fit, to the proper Federal or State authorities, to the end that if such explosion has been brought about by a willful act the person or persons causing such act may be proceeded against and brought to justice; or, if said explosion has been brought about by accidental means, that precautions may be taken to prevent similar accidents from occurring. In the prosecution of such investigations the employees of the Bureau of Mines are hereby granted the authority to enter the premises where such explosion or fire has occurred, to examine plans, books, and papers, to administer oaths to, and to examine all witnesses and persons concerned, without let or hindrance on the part of the owner, lessee, operator, or agent thereof. [— *Stat. L.* —.]

SEC. 21. [Agents to carry out provisions of Act.] That the Director of the Bureau of Mines, with the approval of the President, is hereby authorized to utilize such agents, agencies, and all officers of the United States and of the several States, Territories, dependencies, and municipalities thereof, and the District of Columbia, in the execution of this Act, and all agents, agencies, and all officers of the United States and of the several States and Territories, dependencies, and municipalities thereof, and the District of Columbia, shall hereby have full authority for all acts done by them in the execution of this Act when acting by the direction of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 22. **[Appropriation.]** That for the enforcement of the provisions of this Act, including personal services in the District of Columbia and elsewhere, and including supplies, equipment, expenses of traveling and subsistence, and for the purchase and hire of animal-drawn or motor-propelled passenger-carrying vehicles, and upkeep of same, and for every other expense incident to the enforcement of the provisions of this Act, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary: *Provided*, That not to exceed \$10,000 shall be expended in the purchase of motor-propelled passenger-carrying vehicles. [— *Stat. L.* —.]

[SEC. 1.] **[Cancellation of license.]** * * * That any license issued under the Act of October sixth, nineteen hundred and seventeen, may be canceled by the Director of the Bureau of Mines if the person to whom such license was issued shall, after notice and an opportunity to be heard, be found to have violated any of the provisions of the Act. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following an appropriation for the enforcement of the Explosives Act of Oct. 6, 1917, ch. —, given in the preceding paragraphs of the text.

EXPORTS

See IMPORTS AND EXPORTS; INTERNAL REVENUE; UNFAIR COMPETITION.

FALSE PERSONATION

Act of April 27, 1916, ch. 89, 178.

Sec. 1. False Personation — Prohibition, 178.

2. Time of Taking Effect of Act, 178.

An Act Prohibiting the use of the name of any Member of either House of Congress or of any officer of the Government by any person, firm, or corporation practicing before any department or office of the Government.

[Act of April 27, 1916, ch. 89, 39 Stat. L. 54.]

[SEC. 1.] **[False personation — prohibition.]** That it shall be unlawful for any person, firm, or corporation practicing before any department or office of the Government to use the name of any member of either House of Congress or of any officer of the Government in advertising the said business. [39 *Stat. L.* 54.]

SEC. 2. **[Time of taking effect of Act.]** That this Act shall take effect three months after its date. [39 *Stat. L.* 54.]

FARM LOANS

See AGRICULTURE; NATIONAL BANKS

FEDERAL BOARD FOR VOCATIONAL
EDUCATION

See EDUCATION

FEDERAL RESERVE ACT

See NATIONAL BANKS

FISH AND FISHERIES

Act of April 8, 1918, ch. —, 179.

Columbia River — Concurrent State Jurisdiction Over Waters, 179.

Act of July 1, 1918, ch. —, 180.

Sec. 1. Expenditure of Appropriations — Effect of State Laws and Privileges, 180.

Clothing and Small Stores for Crews of Vessels, 180.

Officers and Crews of Vessels — Commutation of Rations, 180.

Officers and Crews of Vessels — Benefits of Public Health Service, 180.

An Act To ratify the compact and agreement between the States of Oregon and Washington regarding concurrent jurisdiction over the waters of the Columbia River and its tributaries in connection with regulating, protecting, and preserving fish.

[*Act of April 8, 1918, ch. —, — Stat. L. —.*]

[**Columbia River — concurrent state jurisdiction over waters.**] That the Congress of the United States of America hereby consents to and ratifies the compact and agreement entered into between the States of Oregon and Washington relative to regulating, protecting, and preserving fish in the boundary waters of the Columbia River and other waters, which compact and agreement is contained in section twenty of chapter one hundred and eighty-eight of the general laws of Oregon for nineteen hun-

dred and fifteen, and section one hundred and sixteen, chapter thirty-one, of the session laws of Washington for nineteen hundred and fifteen, and is as follows:

“All laws and regulations now existing, or which may be necessary for regulating, protecting, or preserving fish in the waters of the Columbia River, over which the States of Oregon and Washington have concurrent jurisdiction, or any other waters within either of said States, which would affect said concurrent jurisdiction, shall be made, changed, altered, and amended in whole or in part, only with the mutual consent and approbation of both States.”

Nothing herein contained shall be construed to effect the right of the United States to regulate commerce, or the jurisdiction of the United States over navigable waters. [— *Stat. L.* —.]

[SEC. 1.] **[Expenditure of appropriations — effect of State laws and privileges.]** Appropriations herein or hereafter made for propagation of food fishes shall not be expended for hatching or planting fish or eggs in any State in which, in the judgment of the Secretary of Commerce, there are not adequate laws for the protection of the fishes, nor in any State in which the United States Commissioner of Fisheries and his duly authorized agents are not accorded full and free right to conduct fish-cultural operations, and all fishing and other operations necessary therefor, in such manner and at such times as is considered necessary and proper by the said commissioner or his agents. [— *Stat. L.* —.]

This and the three paragraphs of the text following are a part of the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Clothing and small stores for crews of vessels.] Hereafter the Secretary of Commerce is authorized to purchase, to the extent of not to exceed \$5 000, from the appropriations for the Bureau of Fisheries, clothing and small stores for the crews of vessels, to be sold to the employees of said service and the appropriation reimbursed. [— *Stat. L.* —.]

[Officers and crews of vessels — commutation of rations.] Commutation of rations not to exceed 60 cents may be paid to officers and crews of vessels of the Bureau of Fisheries under regulations prescribed by the Secretary of Commerce. [— *Stat. L.* —.]

[Officers and crews of vessels — benefits of Public Health Service.] Officers and crews of the several vessels belonging to the Bureau of Fisheries may be admitted to the benefits of the Public Health Service without charge upon the application of their respective commanding officers. [— *Stat. L.* —.]

FOOD AND FUEL

Act of Aug. 10, 1917, ch. —, 181.

- Sec. 1. Food, Fuel, etc.— Encouraging Production, Conserving Supply and Controlling Distribution — Authority of President, 181.*
- 2. Agencies in Carrying Out Purposes of Act, 182.*
- 3. Agents or Employees of Government Not to Be Interested in Contracts, 182.*
- 4. Destruction of Necessaries — Hoarding — Waste — Monopolizing — Discrimination — Conspiracy — Prohibition, 183.*
- 5. Licensing Importation, Distribution, etc., of Necessaries — Unfair Charges — Revocation of License — Fixing Charges — Application of Act to Farmers, etc., 183.*
- 6. Hoarding Necessaries — What Constitutes Hoarding — Prohibition, 184.*
- 7. Hoarding Necessaries — Jurisdiction of Prosecution — Procedure, 184.*
- 8. Destruction of Necessaries — Penalty, 185.*
- 9. Conspiracy to Restrict Supply of Necessaries, etc., 185.*
- 10. Requisition of Foods, etc.— Compensation, 185.*
- 11. Requisition of Wheat, Flour, Meal, Beans, and Potatoes, 185.*
- 12. Requisition of Factories, Packing Houses, Oil Pipe Lines, Mines, etc., 186.*
- 13. Injurious Speculation, etc.— Prohibition, 187.*
- 14. Wheat — Fixing Price, 187.*
- 15. Distilled Spirits — Use of Food Materials Prohibited — Importation Prohibited, 188.*
- 16. Distilled Spirits — Commandeering, 189.*
- 17. Interference with Officers, etc., in Execution of Duties Under Act — Penalty, 190.*
- 18. Appropriation for Expenses, 190.*
- 19. Further Appropriation — Public Inspection of Accounts, 190.*
- 20. Employees — Exemption from Military Service, 190.*
- 21. Detailed Reports — Contents, 190.*
- 22. Invalidity of Part of Act — Effect as to Remainder, 190.*
- 23. Construction of Language of Act, 191.*
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- 25. Coal and Coke — Fixing Price — Failure to Conform to Regulations — Requisitioning Plants, etc., 191.*
- 26. Hoarding or Destroying Necessaries of Life — Penalty, 194.*

An Act To provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

[*Act of Aug. 10, 1917, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Food, fuel, etc.—encouraging production, conserving supply and controlling distribution — authority of President.**] That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel

including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this Act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessities during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act. [— *Stat. L.* —.]

SEC. 2. [Agencies in carrying out purposes of Act.] That in carrying out the purposes of this Act the President is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds. [— *Stat. L.* —.]

SEC. 3. [Agents or employees of government not to be interested in contracts.] That no person acting either as a voluntary or paid agent or employee of the United States in any capacity, including an advisory capacity, shall solicit, induce, or attempt to induce any person or officer authorized to execute or to direct the execution of contracts on behalf of the United States to make any contract or give any order for the furnishing to the United States of work, labor, or services, or of materials, supplies, or other property of any kind or character, if such agent or employee has any pecuniary interest in such contract or order, or if he or any firm of which he is a member, or corporation, joint-stock company, or association of which he is an officer or stockholder, or in the pecuniary profits of which he is directly or indirectly interested, shall be a party thereto. Nor shall any agent or employee make, or permit any committee or other body of which he is a member to make, or participate in making, any recommendation concerning such contract or order to any council, board, or commission of the United States, or any member or subordinate thereof, without making to the best of his knowledge and belief a full and complete disclosure in writing to such council, board, commission, or subordinate of any and every pecuniary interest which he may have in such contract or order and of his interest in any firm, corporation, company, or association being a party thereto. Nor shall he participate in the awarding of such contract or giving such order. Any willful violation of any of the provisions of this section shall be punishable by a fine of not more than \$10,000, or by imprisonment of not more than five years, or both: *Provided*, That the provisions of this section shall not change, alter or repeal section forty-one of chapter three hundred and twenty-one, Thirty-fifth Statutes at Large. [— *Stat. L.* —.]

For Penal Laws, § 41 mentioned in the proviso of this section, see 1909 Supp. Fed. Stat. Ann. 416, 7 Fed. Stat. Ann. (2d ed.) 607.

SEC. 4. [Destruction of necessities — hoarding — waste — monopolizing — discrimination — conspiracy — prohibition.] That it is hereby made unlawful for any person willfully to destroy any necessities for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessities in or in connection with their production, manufacture, or distribution; to hoard, as defined in section six of this Act, any necessities; to monopolize or attempt to monopolize, either locally or generally, any necessities; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof, or (e) to exact excessive prices for any necessities; or to aid or abet the doing of any act made unlawful by this section. [— *Stat. L.* —,]

SEC. 5. [Licensing importation, distribution, etc., of necessities — unfair charges — revocation of license — fixing charges — application of Act to farmers, etc.] That, from time to time, whenever the President shall find it essential to license the importation, manufacture, storage, mining, or distribution of any necessities, in order to carry into effect any of the purposes of this Act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessities as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of accounts to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory and unfair storage charge, commission, profits, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, or whose license shall have been revoked, knowingly engages in or carries on any business for which a license is required under this section,

or willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice, in accordance with the requirement of an order issued under this section, or any regulation prescribed under this section, shall, upon conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, cooperative association of farmers or gardeners, including live-stock farmers, or other persons with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him nor to any common carrier, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States or any State, Territory, or the District of Columbia: *Provided further*, That for the purposes of this Act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed \$100,000 per annum. [— *Stat. L.* —.]

SEC. 6. [Hoarding necessities — what constitutes hoarding — prohibition.] That any person who willfully hoards any necessities shall upon conviction thereof be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both. Necessaries shall be deemed to be hoarded within the meaning of this Act when either (a) held, contracted for, or arranged for by any person in a quantity in excess of his reasonable requirements for use or consumption by himself and dependents for a reasonable time; (b) held, contracted for, or arranged for by any manufacturer, wholesaler, retailer, or other dealer in a quantity in excess of the reasonable requirements of his business for use or sale by him for a reasonable time, or reasonably required to furnish necessities produced in surplus quantities seasonally throughout the period of scant or no production; or (c) withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price: *Provided*, That this section shall not include or relate to transactions on any exchange, board of trade, or similar institution or place of business as described in section thirteen of this Act that may be permitted by the President under the authority conferred upon him by said section thirteen: *Provided, however*, That any accumulating or withholding by any farmer or gardener, cooperative association of farmers or gardeners, including live-stock farmers, or any other person, of the products of any farm, garden, or other land owned, leased, or cultivated by him shall not be deemed to be hoarding within the meaning of this Act. [— *Stat. L.* —.]

SEC. 7. [Hoarding necessities — jurisdiction of prosecution — procedure.] That whenever any necessities shall be hoarded as defined in section six they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessities shall be adjudged to be hoarded they shall be disposed of by sale in such manner as to provide the most equitable distribution thereof as the court may direct,

and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same. [— *Stat. L.* —.]

SEC. 8. [**Destruction of necessities — penalty.**] That any person who willfully destroys any necessities for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof, be fined not exceeding \$5,000 or imprisoned for not more than two years, or both. [— *Stat. L.* —.]

SEC. 9. [**Conspiracy to restrict supply of necessities, etc.**] That any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict the distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof shall, upon conviction thereof be fined not exceeding \$10,000 or be imprisoned for not more than two years, or both. [— *Stat. L.* —.]

SEC. 10. [**Requisition of foods, etc.— compensation.**] That the President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessities or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies: *Provided*, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessities held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them. [— *Stat. L.* —.]

SEC. 11. [**Requisition of wheat, flour, meal, beans, and potatoes.**] That the President is authorized from time to time to purchase, to store, to provide storage facilities for, and to sell for cash at reasonable prices,

wheat, flour, meal, beans, and potatoes: *Provided*, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section fourteen of this Act, then the price paid for any such articles so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessities under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.
[— *Stat. L.* —.]

SEC. 12. [**Requisition of factories, packing houses, oil pipe lines, mines, etc.**] That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or other plant, or any part thereof, in or through which any necessities are or may be manufactured, produced, prepared, or mined, and to operate the same. Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof. The United States shall make just compensation, to be determined by the President, for the taking over, use, occupation, and operation by the Government of any such factory, mine, or plant, or part thereof. If the compensation so determined be unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. The President is authorized to prescribe such regulations as he may deem essential for carrying out the purposes of this section, including the operation of any such factory, mine, or plant, or part thereof, the purchase, sale, or other disposition of articles used, manufactured, produced, prepared, or mined therein, and the employment, control, and compensation of employees. Any moneys received by the United States from or in connection with the use or operation of any such factory, mine, or plant, or part thereof, may, in the discretion of the President, be used as a revolving fund for the purpose of the continued use or operation of any such factory, mine, or plant, or part thereof, and the accounts of each such factory, mine, plant, or part thereof, shall be kept separate and distinct. Any balance of such moneys not used as part of such revolving fund shall be paid into the Treasury as miscellaneous receipts.
[— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 13. [Injurious speculation, etc.— prohibition.] That whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in, or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessities, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents. Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction, shall, upon conviction thereof, be punished by a fine not exceeding \$10,000 or by imprisonment for not more than four years, or both. [— *Stat. L.* —.]

SEC. 14. [Wheat — fixing price.] That whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers, a reasonable profit. The President shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards Act, approved August eleventh, nineteen hundred and sixteen. The President shall from time to time establish and promulgate such regulations as he shall deem wise in connection with such guaranteed prices, and in particular governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern spring or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every pro-

ducer of wheat produced within the United States, that, upon compliance by him with the regulations prescribed, he shall receive for any wheat produced in reliance upon this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefor as fixed pursuant to this section. In such regulations the President shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. The guaranteed prices for the several standard grades of wheat for the crop of nineteen hundred and eighteen, shall be based upon number one northern spring or its equivalent at not less than \$2 per bushel at the principal interior primary markets. This guaranty shall not be dependent upon the action of the President under the first part of this section, but is hereby made absolute and shall be binding until May first, nineteen hundred and nineteen. When the President finds that the importation into the United States of any wheat produced outside of the United States materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on wheat and to the value of wheat at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section, he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon wheat imported in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty, upon wheat under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is authorized also, in his discretion, to purchase any wheat for which a guaranteed price shall be fixed under this section, and to hold, transport, or store it, or to sell, dispose of, and deliver the same to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of wheat under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

For the United States Grain Standards Act of Aug. 11, 1916, ch. 313, mentioned in this section, see AGRICULTURE, *ante*, p. 3.

SEC. 15. [Distilled spirits—use of food materials prohibited—importation prohibited.] That from and after thirty days from the date of the approval of this Act no foods, fruits, food materials, or feeds shall be used in the production of distilled spirits for beverage purposes: *Provided*, That under such rules, regulations, and bonds as the President may prescribe, such materials may be used in the production of distilled spirits exclusively for other than beverage purposes, or for the fortification of pure

sweet wines as defined by the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen. Nor shall there be imported into the United States any distilled spirits. Whenever the President shall find that limitation, regulation, or prohibition of the use of foods, fruits, food materials, or feeds in the production of malt or vinous liquors for beverage purposes, or that reduction of the alcoholic content of any such malt or vinous liquor, is essential in order to assure an adequate and continuous supply of food, or that the national security and defense will be subserved thereby, he is authorized, from time to time, to prescribe and give public notice of the extent of the limitation, regulation, prohibition, or reduction so necessitated. Whenever such notice shall have been given and shall remain unrevoked no person shall, after a reasonable time prescribed in such notice, use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or import any such liquors except under license issued by the President and in compliance with the rules and regulations determined by him governing the production and importation of such liquors and the alcoholic content thereof. Any person who willfully violates the provisions of this section, or who shall use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or who shall import any such liquors, without first obtaining a license so to do when a license is required under this section, or who shall violate any rule or regulation made under this section, shall be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided further*, That nothing in this section shall be construed to authorize the licensing of the manufacture of vinous or malt liquors in any State, Territory, or the District of Columbia, or any civil subdivision thereof, where the manufacture of such vinous or malt liquor is prohibited. [— *Stat. L.* —.]

For the Act of Sept. 8, 1916, ch. 463, mentioned in this section, see INTERNAL REVENUE, *post*, p. 270.

SEC. 16. [Distilled spirits — commandeering.] That the President is authorized and directed to commandeer any or all distilled spirits in bond or in stock at the date of the approval of this Act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 17. **[Interference with officers, etc., in execution of duties under Act — penalty.]** That every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the execution of any duty authorized to be performed by or pursuant to this Act shall upon conviction thereof be fined not exceeding \$1,000 or be imprisoned for not more than one year, or both. [— *Stat. L.* —.]

SEC. 18. **[Appropriation for expenses.]** That the sum of \$2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the city of Washington and elsewhere, as the President may deem essential. [— *Stat. L.* —.]

SEC. 19. **[Further appropriation — public inspection of accounts.]** That for the purposes of this Act the sum of \$150,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available during the time this Act is in effect: *Provided*, That no part of this appropriation shall be expended for the purposes described in the preceding section: *Provided further*, That itemized statements covering all purchases and disbursements under this and the preceding section shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the twenty-fifth day of each month after the taking effect of this Act, covering the business of the preceding month, and said statements shall be subject to public inspection. [— *Stat. L.* —.]

SEC. 20. **[Employees — exemption from military service.]** That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen. [— *Stat. L.* —.]

For the selective draft law of May 18, 1917, mentioned in this section, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*; 9 Fed. Stat. Ann. (2d ed.) 1136.

SEC. 21. **[Detailed reports — contents.]** The President shall cause a detailed report to be made to the Congress on the first day of January each year of all proceedings had under this Act during the year preceding. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts, payments, and expenditures, together with a statement showing the general character, and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this Act. [— *Stat. L.* —.]

SEC. 22. **[Invalidity of part of Act — effect as to remainder.]** That if any clause, sentence, paragraph, or part of this Act shall for any reason be

adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 23. [**Construction of language of Act.**] That words used in this Act shall be construed to import the plural or the singular, as the case demands. The word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any partnership, association, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omissions, or failure of such partnership, association, or corporation as well as that of the person. [— *Stat. L.* —.]

SEC. 24. [**Termination of Act.**] That the provisions of this Act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated. [— *Stat. L.* —.]

SEC. 25. [**Coal and coke — fixing price — failure to conform to regulations — requisitioning plants, etc.**] That the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as

he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same.

Or if the President of the United States shall be of the opinion that he can thereby better provide for the common defense, and whenever, in his judgment, it shall be necessary for the efficient prosecution of the war, then he is hereby authorized and empowered to require any or all producers of coal and coke, either in any special area or in any special coal fields, or in the entire United States, to sell their products only to the United States through an agency to be designated by the President, such agency to regulate the resale of such coal and coke, and the prices thereof, and to establish rules for the regulation of and to regulate the methods of production, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign, and to make payment of the purchase price thereof to the producers thereof, or to the person or persons legally entitled to said payment.

That within fifteen days after notice from the agency so designated to any producer of coal and coke that his, or its, output is to be so purchased by the United States as hereinbefore described, such producer shall cease shipments of said product upon his own account and shall transmit to such agency all orders received and unfilled or partially unfilled, showing the exact extent to which shipments have been made thereon, and thereafter all shipments shall be made only on authority of the agency designated by the President, and thereafter no such producer shall sell any of said products except to the United States through such agency, and the said agency alone is hereby authorized and empowered to purchase during the continuance of the requirement the output of such producers.

That the prices to be paid for such products so purchased shall be based upon a fair and just profit over and above the cost of production, including proper maintenance and depletion charges, the reasonableness of such profits and cost of production to be determined by the Federal Trade Commission, and if the prices fixed by the said commission of any such product purchased by the United States as hereinbefore described be unsatisfactory

to the person or persons entitled to the same, such person or persons shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

All such products so sold to the United States shall be sold by the United States at such uniform prices, quality considered, as may be practicable and as may be determined by said agency to be just and fair.

Any moneys received by the United States for the sale of any such coal and coke may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any moneys not so used shall be covered into the Treasury as miscellaneous receipts.

That when directed by the President, the Federal Trade Commission is hereby required to proceed to make full inquiry, giving such notice as it may deem practicable, into the cost of producing under reasonably efficient management at the various places of production the following commodities, to wit, coal and coke.

The books, correspondence, records, and papers in any way referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all times be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefor in the manner provided for in sections six and nine of the Act of Congress approved September twenty-sixth, nineteen hundred and fourteen, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said Act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction.

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith,

prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been fixed as herein provided, ask, demand, or receive a higher price, or whoever shall, with knowledge that the regulations have been prescribed as herein provided, violate or refuse to conform to any of the same, shall, upon conviction, be punished by fine of not more than \$5,000, or by imprisonment for not more than two years, or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any price or upon any terms that may be agreed upon or otherwise lawfully determined. [— *Stat. L.* —.]

For the Act of Sept. 26, 1914, ch. 311, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

SEC. 26. [Hoarding or destroying necessities of life — penalty.] That any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessities of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both: *Provided*, That any storing or holding by any farmer, gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: *Provided further*, That farmers and fruit growers, cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: *Provided further*, That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said articles produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act. [— *Stat. L.* —.]

For the Sherman Antitrust Act of July 2, 1890, ch. 647, mentioned in this section, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 644.

FOREIGN CORPORATION TAX

See INTERNAL REVENUE

FOREIGN RELATIONS

*Act of Aug. 29, 1916, ch. 417, 195.**Settlement of International Disputes — Policy of United States
Declared — Conference of Powers, 195.*

CROSS-REFERENCES

See CRIMINAL LAW; PENAL LAWS.

[Settlement of international disputes — policy of United States declared — conference of powers.] * * * It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength.

In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe, all the great Governments of the world to send representatives to a conference which shall be charged with the duty of formulating a plan for a court of arbitration or other tribunal, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who, in his judgment, shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference. The President shall fix the compensation of said representatives, and such secretaries and other employees as may be needed. Two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside and placed at the disposal of the President to carry into effect the provisions of this paragraph.

If at any time before the construction authorized by this Act shall have been contracted for there shall have been established, with the cooperation of the United States of America, an international tribunal or tribunals competent to secure peaceful determinations of all international disputes, and which shall render unnecessary the maintenance of competitive armaments, then and in that case such naval expenditures as may be inconsistent with the engagements made in the establishment of such tribunal or tribunals may be suspended, when so ordered by the President of the United States. [39 Stat. L. 618.]

This is from the Naval Appropriation Act of August 29, 1916, ch. 417,

FOREST RESERVES

See TIMBER LANDS AND FOREST RESERVES

FORGERY

See CRIMINAL LAW; NAVY; PASSPORTS

GAME ANIMALS AND BIRDS

Act of July 3, 1918, ch. — ("Migratory Bird Treaty Act"), 196.

Sec. 1. Title of Act, 196.

2. Sale, Purchase, Transportation, etc., of Migratory Birds, Eggs, etc., 196.

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12. Increasing Food Supply, 201.

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An Act To give effect to the convention between the United States and Great Britain for the protection of migratory birds concluded at Washington, August sixteenth, nineteen hundred and sixteen, and for other purposes.

[*Act of July 3, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Title of Act.] That this Act shall be known by the short title of the "Migratory Bird Treaty Act." [— *Stat. L. —.*]

SEC. 2. [Sale, purchase, transportation, etc., of migratory birds, eggs, etc.] That unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful to hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time or in any manner, any migratory bird, included in the terms of

the convention¹ between the United States and Great Britain for the protection of migratory birds concluded August sixteenth, nineteen hundred and sixteen, or any part, nest, or egg of any such bird. [— *Stat. L.* —.]

1 CONVENTION

WHEREAS, Many species of birds in the course of their annual migration traverse certain parts of the United States and the Dominion of Canada; and

WHEREAS, Many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants on the public domain, as well as to agricultural crops, in both the United States and Canada, but are nevertheless in danger of extermination through lack of adequate protection during the nesting season or while on their way to and from their breeding grounds;

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, being desirous of saving from indiscriminate slaughter and of insuring the preservation of such migratory birds as are either useful to man or are harmless, have resolved to adopt some uniform system of protection which shall effectively accomplish such objects, and to the end of concluding a convention for this purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Robert Lansing, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable Sir Cecil Arthur Spring Rice, G. C. V. O., K. C. M. G., etc., His Majesty's ambassador extraordinary and plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and adopted the following articles:

ARTICLE I

The high contracting powers declare that the migratory birds included in the terms of this convention shall be as follows:

1. Migratory game birds:

- (a) Anatidæ or waterfowl, including brant, wild ducks, geese, and swans.
- (b) Gruidæ or cranes, including little brown, sandhill, and whooping cranes.
- (c) Rallidæ or rails, including coots, gallinules, and sora and other rails.
- (d) Limicolæ or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plovers, sandpipers, snipe, tilts, surf birds, turnstones, willet, woodcock, and yellowlegs.
- (e) Columbidsæ or pigeons, including doves and wild pigeons.

2. Migratory insectivorous birds: Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nut-hatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, wax-wings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.

3. Other migratory nongame birds: Auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murres, petrels, puffins, shearwaters, and terns.

ARTICLE II

The high contracting powers agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

1. The close season on migratory game birds shall be between March 10 and September 1, except that the close season on the Limicolæ or shore birds in the maritime Provinces of Canada and in those States of the United States bordering on the Atlantic Ocean which are situated wholly or in part north of Chesapeake Bay, shall be between February 1 and August 15, and that Indians may take at any time scoters for food but not for sale. The season for hunting shall be further restricted to such period not exceeding three and one-half months, as the high contracting powers may severally deem appropriate and define by law or regulation.

2. The close season on migratory insectivorous birds shall continue throughout the year.

3. The close season on other migratory nongame birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murres and puffins, and their eggs, for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

ARTICLE III

The high contracting powers agree that during the period of 10 years next following the going into effect of this convention, there shall be a continuous close season on the following migratory game birds, to wit:

SEC. 3. [Regulations by Secretary of Agriculture.] That subject to the provisions and in order to carry out the purposes of the convention, the Secretary of Agriculture is authorized and directed, from time to time,

Band-tailed pigeons, little brown, sandhill and whooping cranes, swans, curlew and all shore birds (except the black-breasted and golden plover, Wilson or jack snipe, woodcock, and the greater and lesser yellowlegs); provided that during such 10 years the close seasons on cranes, swans, and curlew in the Province of British Columbia shall be made by the proper authorities of that Province within the general dates and limitations elsewhere prescribed in this convention for the respective groups to which these birds belong.

ARTICLE IV

The high contracting powers agree that special protection shall be given the wood duck and the eider duck either (1) by a close season extending over a period of at least five years, or (2) by the establishment of refuges; or (3) by such other regulations as may be deemed appropriate.

ARTICLE V

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes under such laws or regulations as the high contracting powers may severally deem appropriate.

ARTICLE VI

The high contracting powers agree that the shipment or export of migratory birds or their eggs from any State or Province, during the continuance of the close season in such State or Province, shall be prohibited except for scientific or propagating purposes, and the international traffic in any birds or eggs at such time captured, killed, taken, or shipped at any time contrary to the laws of the State or Province in which the same were captured, killed, taken, or shipped shall be likewise prohibited. Every package containing migratory birds or any parts thereof, or any eggs of migratory birds transported, or offered for transportation, from the Dominion of Canada into the United States or from the United States into the Dominion of Canada, shall have the name and address of the shipper and an accurate statement of the contents clearly marked on the outside of such package.

ARTICLE VII

Permits to kill any of the above-named birds which, under extraordinary conditions, may become seriously injurious to the agricultural or other interests in any particular community, may be issued by the proper authorities of the high contracting powers under suitable regulations prescribed therefor by them respectively, but such permits shall lapse, or may be cancelled, at any time when, in the opinion of said authorities, the particular exigency has passed, and no birds killed under this article shall be shipped, sold, or offered for sale.

ARTICLE VIII

The high contracting powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the execution of the present convention.

ARTICLE IX

The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the convention shall take effect on the date of the exchange of the ratifications. It shall remain in force for fifteen years, and in the event of neither of the high contracting powers having given notification, twelve months before the expiration of said period of fifteen years, of its intention of terminating its operation, the convention shall continue to remain in force for one year and so on from year to year.

In faith whereof, the respective plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their seals.

Done at Washington this sixteenth day of August, one thousand nine hundred and sixteen.

[SEAL.]

[SEAL.]

ROBERT LANSING.
CECIL SPRING RICE.

having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the convention to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President. [— *Stat. L.* —.]

SEC. 4. [Interstate transportation or importation of protected birds.] That it shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or District to or through another State, Territory, or District, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or District in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried. [— *Stat. L.* —.]

SEC. 5. [Arrest of offenders — execution of process — forfeiture.] That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directly by the court having jurisdiction. [— *Stat. L.* —.]

SEC. 6. [Violations of Act — penalty.] That any person, association, partnership, or corporation who shall violate any of the provisions of said convention or of this Act, or who shall violate or fail to comply with any regulation made pursuant to this Act, shall be deemed guilty of a mis-

demeanor and upon conviction thereof shall be fined not more than \$500 or be imprisoned not more than six months, or both. [— *Stat. L.* —.]

SEC. 7. [State laws and regulations.] That nothing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said convention or of this Act, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section three of this Act. [— *Stat. L.* —.]

SEC. 8. [Birds, etc., for scientific purposes — marking packages.] That until the adoption and approval, pursuant to section three of this Act, of regulations dealing with migratory birds and their nests and eggs, such migratory birds and their nests and eggs as are intended and used exclusively for scientific or propagating purposes may be taken, captured, killed, possessed, sold, purchased, shipped, and transported for such scientific or propagating purposes if and to the extent not in conflict with the laws of the State, Territory, or District in which they are taken, captured, killed, possessed, sold, or purchased, or in or from which they are shipped or transported if the packages containing the dead bodies or the nests or eggs of such birds when shipped and transported shall be marked on the outside thereof so as accurately and clearly to show the name and address of the shipper and the contents of the package. [— *Stat. L.* —.]

SEC. 9. [Appropriations.] That the unexpended balances of any sums appropriated by the agricultural appropriation Acts for the fiscal years nineteen hundred and seventeen and nineteen hundred and eighteen, for enforcing the provisions of the Act approved March fourth, nineteen hundred and thirteen, relating to the protection of migratory game and insectivorous birds, are hereby reappropriated and made available until expended for the expenses of carrying into effect the provisions of this Act and regulations made pursuant thereto, including the payment of such rent, and the employment of such persons and means, as the Secretary of Agriculture may deem necessary, in the District of Columbia and elsewhere, cooperation with local authorities in the protection of migratory birds, and necessary investigations connected therewith: *Provided*, That no person who is subject to the draft for service in the Army or Navy shall be exempted or excused from such service by reason of his employment under this Act. [— *Stat. L.* —.]

For the Act of March 4, 1913, ch. 145, § 1, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 148; 3 Fed. Stat. Ann. (2d ed.) 414.

SEC. 10. [Invalidity of part of Act — effect.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof

directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 11. [Repeal of inconsistent Acts.] That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

SEC. 12. [Increasing food supply.] Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply. [— *Stat. L.* —.]

SEC. 13. [Effect.] That this Act shall become effective immediately upon its passage and approval. [— *Stat. L.* —]

GEODETIC SURVEY

See COAST AND GEODETIC SURVEY

GEOLOGICAL SURVEY

Act of June 12, 1917, ch. —, 201.

Sec. 1. Supplies — Services — Open Market, 201.

[SEC. 1.] [Supplies — services — open market.] * * * That hereafter the purchase of supplies or the procurement of services outside the District of Columbia may be made in open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

GLACIER NATIONAL PARK

See PUBLIC PARKS

GRAIN STANDARDS ACT

See AGRICULTURE

HAWAIIAN ISLANDS

Act of May 23, 1918, ch. —, 202.

Sec. 1. Intoxicating Liquors — Sale, Importation, etc., Prohibited — Penalty — Determination by Voters, 202.

2. Petition by Voters — Filing, 202.

Act of June 13, 1918, ch. —, 203.

Sec. 1. Female Citizens — Right to Vote — Determination by Legislature, 203.

2. Determination by Voters of Territory, 203.

3. Repeal of Conflicting Provisions, 203.

4. Effect — Application, 203.

An Act To prohibit the sale, manufacture, and importation of intoxicating liquors in the Territory of Hawaii during the period of the war, except as hereinafter provided.

[*Act of May 23, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Intoxicating liquors — sale, importation, etc., prohibited — penalty — determination by voters.] That, ninety days after the passage of this Act, during the period of the war and thereafter, except as herein provided, it shall be unlawful in the Territory of Hawaii to sell, give away, manufacture, transport, import, or export intoxicating liquors, except for mechanical, scientific, sacramental, or medicinal purposes, for which purposes the sale, gift, transport, import, and export of the same shall be under such rules and regulations as the Governor of the Territory may prescribe, and any person violating the provisions hereof shall be fined in a sum not exceeding \$500 or imprisoned for a period of not longer than one year, or both: *Provided*, That at any general election of the Territory of Hawaii, held within two years after the conclusion of peace, the repeal of this Act may, upon petition of not less than twenty per centum of the qualified electors of said Territory at the last preceding general election, be submitted to a vote of the qualified electors of said territory, and if a majority of all the qualified electors thereof voting upon such questions shall vote to repeal this Act, it shall therefore not be in force and effect, otherwise it shall be in full force and effect. [*— Stat. L. —.*]

SEC. 2. [Petition by voters — filing.] That the said petition shall be addressed to and filed with the Secretary of the Territory at least two months before the election at which the question is to be voted upon, and the person obtaining any signature to such petition shall make affidavit that he witnessed the signing of the same and believes the address of each petitioner affixed to his name is the true address of such petitioner. Such election shall be conducted under the laws of the Territory provided for general elections. [*— Stat. L. —.*]

An Act Granting to the Legislature of the Territory of Hawaii additional powers relative to elections and qualification of electors.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Female citizens — right to vote — determination by Legislature.]** That the Legislature of the Territory of Hawaii be, and it is hereby, vested with the power to provide that, in all elections authorized to be held by the organic act of the Territory of Hawaii, female citizens possessing the same qualifications as male citizens shall be entitled to vote. [*— Stat. L. —.*]

SEC. 2. **[Determination by voters of Territory.]** That the said Legislature is further hereby vested with the power to have submitted to the voters of the Territory of Hawaii the question of whether or not the female citizens of the Territory shall be empowered to vote at elections held under the laws of the Territory of Hawaii. [*— Stat. L. —.*]

SEC. 3. **[Repeal of conflicting provisions.]** That all provisions of the organic act of the Territory of Hawaii restricting the right to vote to male citizens which are in conflict with the provisions hereof are hereby repealed. [*— Stat. L. —.*]

SEC. 4. **[Effect — application.]** That this Act shall take effect and be enforced from and after its approval, and shall be held to apply to both Territorial and municipal elections. [*— Stat. L. —.*]

HEALTH AND QUARANTINE

Act of April 17, 1917, ch. —, 204.

Sec. 1. Vessels from Foreign Ports — Fumigation — Disinfection, 204.

Res. of July 9, 1917, No. 9, 204.

Public Health Service — Officers — War Service — Status and Rights — Pensions, 204.

Act of July 1, 1918, ch. —, 204.

Sec. 1. Officers of Public Health Service — Allotment of Pay, 204.

Detail for Service with Bureau of Mines, 204.

Attendants at Marine Hospitals, Quarantine and Immigration Stations — Pay Increased, 205.

Act of July 9, 1918, ch. —, 205.

Chapter XV.

Sec. 1. Interdepartmental Social Hygiene Board — Composition — Duties, 205.

2. Assistance to States in Caring for Detained, Committed, etc., Persons, 205.

3. Division of Venereal Diseases Established — Composition, 205.

4. Duties of Division, 205.

5. Appropriation to Assist States in Caring for Detained, etc., Persons, 206.

- Sec. 6. Appropriation for State Boards of Health and Educational Institutions — Conditions of Payment, 205.*
7. Appropriation for Division of Venereal Diseases and Interdepartmental Social Hygiene Board, 207.
8. "State" as Including District of Columbia, 207.

[SEC. 1.] **[Vessels from foreign ports — fumigation — disinfection.]**
 * * * Hereafter the cost of fumigation and disinfection shall be charged vessels from foreign ports at rates to be fixed by the Secretary of the Treasury. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

Joint Resolution To fix the status and rights of officers of the Public Health Service when serving with the Coast Guard, the Army, or the Navy.

[*Res. of July 9, 1917, No. 9, — Stat. L. —.*]

[Public health service — officers — war service — status and rights — pensions.] That when officers of the United States Public Health Service are serving on Coast Guard vessels in time of war, or are detailed in time of war for duty with the Army or Navy in accordance with law, they shall be entitled to pensions for themselves and widows and children, if any, as are now provided for officers of corresponding grade and length of service of the Coast Guard, Army or Navy, as the case may be, and shall be subject to the laws prescribed for the government of the service to which they are respectively detailed. [— *Stat. L.* —.]

[SEC. 1.] **[Officers of Public Health Service — Allotment of pay.]**
 * * * The Secretary of the Treasury is authorized to permit officers of the Public Health Service to make allotments from their pay under such regulations as he may prescribe. [— *Stat. L.* —.]

This and the two following paragraphs of the text are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Detail for Service with Bureau of Mines.] The Secretary of the Treasury may detail medical officers of the Public Health Service for cooperative health, safety, or sanitation work with the Bureau of Mines, and the compensation and expenses of officers so detailed may be paid from the applicable appropriations made herein for the Bureau of Mines. [— *Stat. L.* —.]

[Attendants at Marine hospitals, quarantine and immigration stations — pay increased.] * * * That the pay of attendants at marine hospitals, quarantine, and immigration stations, whose present compensation is less than the rate of \$1,200 per annum, may be increased to a rate not to exceed \$1,200 per annum; [— *Stat. L.* —.]

[SEC. 1.] [Interdepartmental Social Hygiene Board — composition — duties.] That there is hereby created a board to be known as the Interdepartmental Social Hygiene Board, to consist of the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury as ex officio members, and of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Public Health Service, or of representatives designated by the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury, respectively. The duties of the board shall be: (1) To recommend rules and regulations for the expenditure of moneys allotted to the States under section five of this chapter; (2) to select the institutions and organizations and fix the allotments to each institution under said section five; (3) to recommend to the Secretary of the Treasury, the Secretary of War, and the Secretary of the Navy such general measures as will promote correlation and efficiency in carrying out the purposes of this chapter by their respective departments; and (4) to direct the expenditure of the sum of \$100,000 referred to in the last paragraph of section seven of this chapter. The board shall meet at least quarterly, and shall elect annually one of its members as chairman, and shall adopt rules and regulations for the conduct of its business. [— *Stat. L.* —.]

The foregoing section 1 and the following sections 2-8 are from chapter XV of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Assistance to States in caring for detained, committed, etc., persons.] That the Secretary of War and the Secretary of the Navy are hereby authorized and directed to adopt measures for the purpose of assisting the various States in caring for civilian persons whose detention, isolation, quarantine, or commitment to institutions may be found necessary for the protection of the military and naval forces of the United States against venereal disease. [— *Stat. L.* —.]

SEC. 3. [Division of Venereal Diseases established — composition.] That there is hereby established in the Bureau of the Public Health Service, a Division of Venereal Diseases, to be under the charge of a commissioned medical officer of the United States Public Health Service detailed by the Surgeon General of the Public Health Service, which officer while thus serving shall be an Assistant Surgeon General of the Public Health Service, subject to the provisions of law applicable to assistant surgeons general in charge of administrative divisions in the District of Columbia of the Bureau of the Public Health Service. There shall be in such division such assistants, clerks, investigators, and other employees as may be necessary for the performance of its duties and as may be provided for by law. [— *Stat. L.* —.]

SEC. 4. [Duties of division.] That the duties of the Division of Venereal Diseases shall be in accordance with rules and regulations prescribed by the Secretary of the Treasury (1) to study and investigate the cause, treatment, and prevention of venereal diseases; (2) to cooperate with State boards or departments of health for the prevention and control of such

diseases within the State; and (3) to control and prevent the spread of these diseases in interstate traffic: *Provided*, That nothing in this chapter shall be construed as limiting the functions and activities of other departments or bureaus in the prevention, control, and treatment of venereal diseases and in the expenditure of moneys therefor. [— *Stat. L.* —.]

SEC. 5. [Appropriation to assist States in caring for detained, etc., persons.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000,000, to be expended under the joint direction of the Secretary of War and the Secretary of the Navy to carry out the provisions of section two of this chapter: *Provided*, That the appropriation herein made shall not be deemed exclusive, but shall be in addition to other appropriations of a more general character which are applicable to the same or similar purposes. [— *Stat. L.* —.]

SEC. 6. [Appropriation for State boards of health and educational institutions — conditions of payment.] That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$1,400,000 annually for two fiscal years, beginning with the fiscal year commencing July first, nineteen hundred and eighteen, to be apportioned as follows: The sum of \$1,000,000, which shall be paid to the States for the use of their respective boards or departments of health in the prevention, control, and treatment of venereal diseases; this sum to be allotted to each State, in accordance with the rules and regulations prescribed by the Secretary of the Treasury, in the proportion which its population bears to the population of the continental United States, exclusive of Alaska and the Canal Zone, according to the last preceding United States census, and such allotment to be so conditioned that for each dollar paid to any State the State shall specifically appropriate or otherwise set aside an equal amount for the prevention, control, and treatment of venereal diseases, except for the fiscal year ending June thirtieth, nineteen hundred and nineteen, for which the allotment of money is not conditioned upon the appropriation or setting aside of money by the State, provided that any State may obtain any part of its allotment for any fiscal year subsequent to June thirtieth, nineteen hundred and nineteen, by specifically appropriating or otherwise setting aside an amount equal to such part of its allotment for the prevention, control, and treatment of venereal diseases; the sum of \$100,000, which shall be paid to such universities, colleges, or other suitable institutions, as in the judgment of the Interdepartmental Social Hygiene Board are qualified for scientific research, for the purpose of discovering, in accordance with rules and regulations prescribed by the Interdepartmental Social Hygiene Board, more effective medical measures in the prevention and treatment of venereal diseases; the sum of \$300,000, which shall be paid to such universities, colleges, or other suitable institutions or organizations, as in the judgment of the Interdepartmental Social Hygiene Board are qualified for scientific research, for the purpose of discovering and developing more effective educational measures in the prevention of venereal diseases, and for the purpose of sociological and psychological research related thereto. [— *Stat. L.* —.]

SEC. 7. [Appropriation for Division of Venereal Diseases and Interdepartmental Social Hygiene Board.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000 for the fiscal year ending June thirtieth, nineteen hundred and nineteen, to be apportioned as follows: The sum of \$200,000 to defray the expenses of the establishment and maintenance of the Division of Venereal Diseases in the Bureau of the Public Health Service: and the sum of \$100,000 to be used under the direction of the Interdepartmental Social Hygiene Board for any purpose for which any of the appropriations made by this chapter are available. [— *Stat. L.* —.]

SEC. 8. [“State” as including District of Columbia.] That the terms “State” and “States,” as used in this chapter, shall be held to include the District of Columbia. [— *Stat. L.* —.]

See the note to section 1 of this chapter, *supra*, p. 205.

A further paragraph of this section, omitted here, is given in EMINENT DOMAIN, *ante*, p. 167.

HOLIDAYS

See POSTAL SERVICE

HOMESTEADS

See ALASKA; PUBLIC LANDS

HOSPITALS AND ASYLUMS

Act of July 1, 1916, ch. 209, 208.

Sec. 1. *Marine Hospitals — Admission of Persons for Study, 208.*

Government Hospital for Insane — Change of Name, 208.

Freedmen's Hospital — Unclaimed Money of Deceased Patients, 208.

Act of Feb. 3, 1917, ch. 26, 208.

Sec. 1. *Leprosy — Care and Treatment — Establishment of Home — Site — Administration, 208.*

2. *Inmates of Home — Expense of Transportation, 209.*

3. *Regulations, 209.*

4. *Erection of Buildings — Cost, 209.*

5. *Officers of Public Health Service — Detail for Duty at Home — Pay and Allowances, 209.*

6. *Appropriation, 209.*

Act of May 12, 1917, ch. —, 209.

Army Hospitals — Erection — Authority of Congress, 209.

Act of June 12, 1917, ch. —, 210.

Sec. 1. Canal Zone — Insane Persons, 210.

Act of Oct. 6, 1917, ch. —, 210.

Sec. 1. Insane Persons under Jurisdiction of War Department — Disposition, 210.

Act of July 1, 1918, ch. —, 211.

Sec. 1. Saint Elizabeth's Hospital — Payment by Public Health Service for Persons Admitted, 211.

[SEC. 1.] [Marine hospitals — admission of persons for study.] * * * That there may be admitted into said hospitals for study persons with infectious or other diseases affecting the public health, and not to exceed ten cases in any one hospital at one time. [39 Stat. L. 278.]

The foregoing paragraph and the two paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

This paragraph follows an appropriation for marine hospitals to which the words "said hospitals" refer. Identical provisions have appeared in both prior and subsequent sections of this chapter.

[Government hospital for insane — change of name.] * * * After the passage of this Act the Government Hospital for the Insane shall be known and designated as Saint Elizabeths Hospital. [39 Stat. L. 309.]

See the note to the preceding paragraph of the text.

The Government Hospital for the Insane was authorized to be established by R. S. sec. 4838. See 3 Fed. Stat. Ann. 272; 3 Fed. Stat. Ann. (2d ed.) 598.

[Freedmen's Hospital — unclaimed money of deceased patients.] * * * Hereafter all unclaimed money left at the Freedmen's Hospital by deceased patients shall, after a period of three years, be deposited in the Treasury of the United States to the credit of miscellaneous receipts. [39 Stat. L. 311.]

See the note to the second preceding paragraph of this Act.

An Act To provide for the care and treatment of persons afflicted with leprosy and to prevent the spread of leprosy in the United States.

[Act of Feb. 3, 1917, ch. 26, 39 Stat. L. 872.]

[SEC. 1.] [Leprosy — care and treatment — establishment of home — site — administration.] That for the purpose of carrying out the provisions of this Act the Secretary of the Treasury is authorized to select and obtain, by purchase or otherwise, a site suitable for the establishment of a home for the care and treatment of persons afflicted with leprosy, to be administered by the United States Public Health Service; and either the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, or the Secretary of Agriculture is authorized to transfer to the Secretary of the Treasury any abandoned military, naval, or other reservation suitable for the purpose, or as much thereof as may be necessary, with all buildings and improvements thereon, to be used for the purpose of said home. [39 Stat. L. 872.]

SEC. 2. [Inmates of home — expense of transportation.] That there shall be received into said home, under regulations prepared by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, any person afflicted with leprosy who presents himself or herself for care, detention, and treatment, or who may be apprehended under authority of the United States quarantine Acts, or any person afflicted with leprosy duly consigned to said home by the proper health authorities of any State, Territory, or the District of Columbia. The Surgeon General of the Public Health Service is authorized, upon request of said authorities, to send for any person afflicted with leprosy within their respective jurisdictions, and to convey said person to such home for detention and treatment, and when the transportation of any such person is undertaken for the protection of the public health, the expense of such removal shall be paid from funds set aside for the maintenance of said home. [39 Stat. L. 873.]

SEC. 3. [Regulations.] That regulations shall be prepared by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, for the government and administration of said home and for the apprehension, detention, treatment, and release of all persons who are inmates thereof. [39 Stat. L. 873.]

SEC. 4. [Erection of buildings — cost.] That the Secretary of the Treasury be, and he is hereby, authorized to cause the erection upon such site of suitable and necessary buildings for the purposes of this Act at a cost not to exceed the sum herein appropriated for such purpose. [39 Stat. L. 873.]

SEC. 5. [Officers of Public Health Service — detail for duty at home — pay and allowances.] That when any commissioned or other officer of the Public Health Service is detailed for duty at the home herein provided for he shall receive, in addition to the pay and allowances of his grade, one-half the pay of said grade and such allowances as may be provided by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury. [39 Stat. L. 873.]

SEC. 6. [Appropriation.] That for the purposes of carrying out the provisions of this Act there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$250,000, or as much thereof as may be necessary, for the preparation of said home, including the erection of necessary buildings, the maintenance of the patients, pay, and maintenance of necessary officers and employees, until June thirtieth, nineteen hundred and seventeen. [39 Stat. L. 873.]

[Army hospitals — erection — authority of Congress.] * * * That no building or structure of a permanent nature, the cost of which shall

exceed \$30,000, shall hereafter be erected for use as an Army hospital unless by special authority of Congress. [— *Stat. L.* —.]

This is from the Army Appropriation Act of May 12, 1917, ch. —.

[SEC. 1.] [Canal Zone — insane persons.] * * * Upon the application of the governor of the Panama Canal the Secretary of the Interior is authorized to transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment all American citizens legally adjudged insane in the Canal Zone whose legal residence in one of the States and Territories or the District of Columbia it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to the hospital, the superintendent of the hospital shall thereupon transfer such persons to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of the hospital. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[SEC. 1.] [Insane persons under jurisdiction of war department — disposition.] * * * The Secretary of War is authorized, during the existing emergency, to transfer to the various public hospitals for the care of the insane, patients of every class entitled to treatment in Saint Elizabeths Hospital and that are admitted on order of the Secretary of War.

The Secretary of War is authorized to transfer from any military hospital to the nearest available public hospital for the care of the insane any insane patient who is in need of treatment, preference being given to the hospital nearest to the place of the patient's enlistment. The superintendent of such public hospital shall possess the right to retain the aforementioned class of patients in his hospital in the same manner and to the same extent as now possessed by the Superintendent of Saint Elizabeths Hospital.

The Superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of the Interior, shall transfer to the various public hospitals out of the various appropriations made by Congress for the support and treatment of patients in Saint Elizabeths Hospital a sum sufficient to pay for the support and treatment of patients sent to public hospitals as herein provided, based upon the per capita cost of maintenance in Saint Elizabeths Hospital, said payment not to exceed at any time the exact cost of support and treatment of such patients.

The Secretary of War is authorized to grant a revocable permit to the Saint Elizabeths Hospital for the use of such portions of land as are at present not under lease and such other portions thereof as leases thereof expire, of that portion of land lying along Anacostia Flats which has been reclaimed by the War Department and is valuable for farming purposes.

Interned persons and prisoners of war, under the jurisdiction of the War Department, who are or may become insane hereafter shall be entitled to admission for treatment to Saint Elizabeths Hospital. [—*Stat. L.*—.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

[SEC. 1.] [Saint Elizabeth's Hospital—payment by Public Health Service for persons admitted.] * * * That the Public Health Service, from and after July first, nineteen hundred and eighteen, shall pay to Saint Elizabeth's Hospital the actual per capita cost of maintenance in the said hospital of patients committed by that service. [—*Stat. L.*—.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

HOUSE OF REPRESENTATIVES

See CONGRESS

IMMIGRATION

Act of Feb. 5, 1917, ch. 29, 212.

Sec. 1. *Immigration—Regulation—“Alien,” “United States,” “Seaman” Defined—Isthmian Canal Zone and Insular Possessions—Philippine Islands, 212.*

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An Act To regulate the immigration of aliens to, and the residence of aliens in, the United States.

[Act of Feb. 5, 1917, ch. 29, 39 Stat. L. 874.]

[SEC. 1.] [Immigration — regulation — "Alien," "United States," "Seaman" defined — Isthmian Canal Zone and insular possessions — Philippine Islands.] That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the

United States; but this definition shall not be held to include Indians of the United States not taxed or citizens of the islands under the jurisdiction of the United States. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens. That the term "seaman" as used in this Act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place.

That this Act shall be enforced in the Philippine Islands by officers of the general government thereof, unless and until it is superseded by an act passed by the Philippine Legislature and approved by the President of the United States to regulate immigration in the Philippine Islands as authorized in the Act entitled "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August twenty-ninth, nineteen hundred and sixteen. [39 Stat. L. 874.]

For the Act of Aug. 29, 1916, ch. 416, mentioned in this section, see PHILIPPINE ISLANDS, *post*.

This bill having been vetoed by the President, there appeared at the end of final section 38 thereof, the following:

"CHAMP CLARK,
Speaker of the House of Representatives.

"THOS. R. MARSHALL
*Vice President of the United States and
President of the Senate.*

"IN THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES.

February 1, 1917.

"The President of the United States having returned to the House of Representatives, in which it originated, the bill (H. R. 10384) 'To regulate the immigration of aliens to, and the residence of aliens in, the United States,' with his objections thereto, the House proceeded in pursuance of the Constitution to reconsider the same; and,

"Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

"Attest:

SOUTH TRIMBLE
Clerk.

"IN THE SENATE OF THE UNITED STATES.

February 5, 1917.

"The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill (H. R. 10384) entitled 'An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States,' returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate with the message of the President returning the bill,

"Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

"Attest:

JAMES M. BAKER.
Secretary.

SEC. 2. [Head tax — imposition — payment — lien on vessel.] That there shall be levied, collected, and paid a tax of \$8 for every alien, including

alien seamen regularly admitted as provided in this Act, entering the United States: *Provided*, That children under sixteen years of age who accompany their father or their mother shall not be subject to said tax. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance or vehicle bringing such alien to the United States, or by the alien himself if he does not come by vessel, transportation line, or other conveyance or vehicle or when collection from the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance, or vehicle bringing such alien to the United States is impracticable. The tax imposed by this section shall be a lien upon the vessel or other vehicle of carriage or transportation bringing such aliens to the United States, and shall be a debt in favor of the United States against the owner or owners of such vessel or other vehicle, and the payment of such tax may be enforced by any legal or equitable remedy. That the said tax shall not be levied on account of aliens who enter the United States after an uninterrupted residence of at least one year immediately preceding such entrance in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, for a temporary stay, nor on account of otherwise admissible residents or citizens of any possession of the United States, nor on account of aliens in transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory, and the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and regulations and prescribe the conditions necessary to prevent abuse of these exceptions: *Provided*, That the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, by agreement with transportation lines, as provided in section twenty-three of this Act, may arrange in some other manner for the payment of the tax imposed by this section upon any or all aliens seeking admission from foreign contiguous territory: *Provided further*, That said tax, when levied upon aliens entering the Philippine Islands, shall be paid into the treasury of said islands, to be expended for the benefit of such islands: *Provided further*, That in the cases of aliens applying for admission from foreign contiguous territory and rejected, the head tax collected shall upon application, upon a blank which shall be furnished and explained to him, be refunded to the alien. [39 Stat. L. 875.]

SEC. 3. [Classes of aliens excluded.] That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally

or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this Act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for admission; persons whose tickets or passage is paid for with the money of another, or who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or

dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich, and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act.

That after three months from the passage of this Act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part

of the United States to another through foreign contiguous territory: *Provided*, That nothing in this Act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: *Provided further*, That the provisions of this Act, relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *Provided further*, That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: *Provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: *Provided further*, That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone: *Provided further*, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe: *Provided further*, That nothing in the contract-labor or reading-test provisions of this Act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by Act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: *Provided further*, That the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: *Provided further*, That nothing in this Act shall be

construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests. [39 Stat. L. 875.]

Certain classes of aliens excluded by this Act are to be admitted notwithstanding this section of the Res. of June 29, 1918, No. —, *infra*, p. 241.

Deserter from Canadian army.—A Canadian soldier who enters the United States on a furlough and outstays his furlough, cannot, though a deserter, be excluded under this section which provides for the exclusion from the United States of persons having been convicted

of, or admitting the commission of, prior to entry, a felony or other crime, or a misdemeanor involving moral turpitude, because "prior to entry" he had not committed a crime, even though the intention then existed of outstaying the furlough. *Ex p. Hill*, 245 Fed. 687.

SEC. 4. [Importation of prostitutes — aliens imported for immoral purpose — penalty — jurisdiction of courts — evidence.] That the importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall in every such case be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment for a term of not more than ten years and by a fine of not more than \$5,000. Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said importation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occurs. That any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act which relate to prostitutes, procurers, or other like immoral persons, attempt thereafter to return to or to enter the United States shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than two years. In all prosecutions under this section the testimony of a husband or wife shall be admissible and competent evidence against each other. [39 Stat. L. 878.]

SEC. 5. [Contract laborers — prohibition of importation — penalties.] That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section, and for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of \$1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of

the United States. For every violation of the provisions hereof the person violating the same may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of \$1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. The Department of Justice, with the approval of the Department of Labor, may from any fines or penalties received pay rewards to persons other than Government employees who may furnish information leading to the recovery of any such penalties, or to the arrest and punishment of any person, as in this section provided. [39 Stat. L. 879.]

SEC. 6. [Encouraging immigration by promises of employment, etc.—penalty.] That it shall be unlawful and be deemed a violation of section five of this Act to induce, assist, encourage, or solicit or attempt to induce, assist, encourage, or solicit any alien to come into the United States by promise of employment through advertisements printed, published, or distributed in any foreign country, whether such promise is true or false, and either the civil or criminal penalty or both imposed by said section shall be applicable to such a case. [39 Stat. L. 879.]

SEC. 7. [Encouraging immigration forbidden — penalties.] That it shall be unlawful for any person, association, society, company, partnership, corporation, or others engaged in the business of transporting aliens to or within the United States, including owners, masters, officers, and agents of vessels, directly or indirectly, by writing, printing, oral representation, payment of any commissions to an alien coming into the United States, allowance of any rebates to an alien coming into the United States, or otherwise to solicit, invite, or encourage or attempt to solicit, invite, or encourage any alien to come into the United States, and anyone violating any provision hereof shall be subject to either the civil or the criminal prosecution or both, prescribed by section five of this Act; or if it shall appear to the satisfaction of the Secretary of Labor that any owner, master, officer, or agent of a vessel has brought or caused to be brought to a port of the United States any alien so solicited, invited, or encouraged to come by such owner, master, officer, or agent, such owner, master, officer, or agent shall pay to the collector of customs of the customs district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of \$400 for each and every such violation; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while the fine imposed remains unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit with the collector of customs of a sum sufficient to cover such fine: *Provided further*, That whenever it shall be shown to the satisfaction of the Secretary of Labor that the provisions of this section are persistently violated by or on behalf of any transportation company, it shall be the duty of said Secretary to deny to such company the privilege of landing alien immigrant passengers of any or all classes at United States

ports for such a period as in his judgment may be necessary to insure an observance of such provisions: *Provided further*, That this section shall not be held to prevent transportation companies from issuing letters, circulars, or advertisements, confined strictly to stating the sailing of their vessels and terms and facilities of transportation therein: *Provided further*, That under sections five, six and seven hereof it shall be presumed from the fact that any person, company, partnership, corporation, association, or society induces, assists, encourages, solicits or invites, or attempts to induce, assist, encourage, solicit or invite the importation, migration or coming of an alien from a country foreign to the United States, that the offender had knowledge of such person's alienage. [39 Stat. L. 879.]

SEC. 8. [Smuggling in aliens — penalty.] That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, or shall conceal or harbor, or attempt to conceal or harbor, or assist or abet another to conceal or harbor in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States under the terms of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$2,000 and by imprisonment for a term not exceeding five years, for each and every alien so landed or brought in or attempted to be landed or brought in. [39 Stat. L. 880.]

SEC. 9. [Bringing in undesirable aliens — punishment.] That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated

in section three of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$25, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section three of this Act because unable to read, or who is excluded by the terms of section three of this Act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines: *Provided further*, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section three hereof exempted from the excluding provisions of said section. [39 Stat. L. 880.]

SEC. 10. [Permitting landing of alien at improper time or place — punishment.] That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such

vessel, a penalty of \$1,000 shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court. [39 Stat. L. 881.]

SEC. 11. **[Detention of aliens for examination.]** That for the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded by this Act, either by reason of being afflicted with any of the diseases or mental or physical defects or disabilities mentioned in section three hereof, or otherwise, or whenever the Secretary of Labor has received information showing that any aliens are coming from a country or have embarked at a place where any of said diseases are prevalent or epidemic, the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them, or in a United States immigration station at the expense of such vessel, as circumstances may require or justify, a sufficient time to enable the immigration officers and medical officers stationed at such ports to subject aliens to an observation and examination sufficient to determine whether or not they belong to the said excluded classes by reason of being afflicted in the manner indicated: *Provided*, That, with a view to avoid undue delay in landing passengers or interference with commerce, the Commissioner General of Immigration may, with the approval of the Secretary of Labor, issue such regulations, not inconsistent with law, as may be deemed necessary to affect the purposes of this section: *Provided further*, That it shall be the duty of immigrant inspectors to report to the Commissioner General of Immigration the condition of all vessels bringing aliens to United States ports. [39 Stat. L. 881.]

SEC. 11a. **[Detail of inspectors, etc., to vessels carrying aliens.]** That the Secretary of Labor is hereby authorized and directed to enter into negotiations, through the Department of State, with countries vessels of which bring aliens to the United States, with a view to detailing inspectors and matrons of the United States Immigration Service for duty on vessels carrying immigrant or emigrant passengers between foreign ports and ports of the United States. When such inspectors and matrons are detailed for said duty they shall remain in that part of the vessel where immigrant passengers are carried; and it shall be their duty to observe such passengers during the voyage and report to the immigration authorities in charge at the port of landing any information of value in determining the admissibility of such passengers that may have become known to them during the voyage. [39 Stat. L. 882.]

SEC. 12. **[Duties of master, etc., of vessels carrying aliens — manifests, etc.— details required.]** That upon the arrival of any alien by water at any port within the United States on the North American Continent from a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or at any port of the said insular possessions from any foreign port, from a port in the United States on the North American Continent, or from a port of another insular possession of the United States, it shall

be the duty of the master or commanding officer, owners, or consignees of the steamer, sailing or other vessel having said alien on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, contain full and accurate information as to each alien as follows: Full name, age, and sex; whether married or single; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); whether able to read or write; nationality; country of birth; race; country of last permanent residence; name and address of the nearest relative in the country from which the alien came; seaport for landing in the United States; final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; by whom passage was paid; whether in possession of \$50, and if less, how much; whether going to join a relative or friend, and, if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane; whether ever supported by charity; whether a polygamist; whether an anarchist; whether a person who believes in or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or who disbelieves in or is opposed to organized government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property, or is a member of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or which teaches the unlawful destruction of property, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized Government because of his or their official character; whether coming by reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States; the alien's condition of health, mental and physical; whether deformed or crippled, and if so, for how long and from what cause; whether coming with the intent to return to the country whence such alien comes after temporarily engaging in laboring pursuits in the United States; and such other items of information as will aid in determining whether any such alien belongs to any of the excluded classes enumerated in section three hereof; and such master or commanding officer, owners, or consignees shall also furnish information in relation to the sex, age, class of travel, and the foreign port of embarkation of arriving passengers who are United States citizens. That it shall further be the duty of the master or commanding officer of every vessel taking passengers from any port of the United States on the North American Continent to a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or from any port of the said insular possessions to any foreign port, to a port of the United States on the North American Continent, or to a port of another insular possession of the United States to file with the immigration officials before departure a list which shall contain full and accurate information in relation to the following matters regarding all

alien passengers, and all citizens of the United States or insular possessions of the United States departing with the stated intent to reside permanently in a foreign country, taken on board: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States or insular possessions thereof; if a citizen of the United States or of the insular possessions thereof, whether native born or naturalized; if native born, the place and date of birth, or if naturalized the city or town in which naturalization has been had; intended future permanent residence; and time and port of last arrival in the United States, or insular possessions thereof; and such master or commanding officer shall also furnish information in relation to the sex, age, class of travel, and port of debarkation of the United States citizens departing who do not intend to reside permanently in a foreign country, and no master of any such vessel shall be granted clearance papers for his vessel until he has deposited such list or lists with the immigration officials at the port of departure and made oath that they are full and complete as to the name and other information herein required concerning each person of the classes specified taken on board his vessel; and any neglect or omission to comply with the requirements of this section shall be punishable as provided in section fourteen of this Act: *Provided*, That in the case of vessels making regular trips to ports of the United States the Commissioner General of Immigration, with the approval of the Secretary of Labor, may, when expedient, arrange for the delivery of such lists of outgoing aliens at a later date: *Provided further*, That it shall be the duty of immigration officials to record the following information regarding every resident alien and citizen leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen, whether native born or naturalized. [39 Stat. L. 882.]

SEC. 13. [Listing of aliens — manifests — verification.] That all aliens arriving by water at the ports of the United States shall be listed in convenient groups, the names of those coming from the same locality to be assembled so far as practicable, and no one list or manifest shall contain more than thirty names. To each alien or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list in which his name, and other items of information required by this Act, are contained, and his number on said list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer, or the first or second below him in command, taken before an immigration officer at the port of arrival, to the effect that he has caused the surgeon of said vessel sailing therewith to make a physical and mental examination of each of said aliens, and that from the report of said surgeon and from his own investigation he believes that no one of said aliens is of any of the

classes excluded from admission into the United States by section three of this Act, and that also according to the best of his knowledge and belief the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect. That the surgeon of said vessel sailing therewith shall also sign each of said lists or manifests and make oath or affirmation in like manner before an immigration officer at the port of arrival, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the said aliens named therein, and that the said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said aliens. If no surgeon sails with any vessel bringing aliens, the mental and physical examinations and the verifications of the lists or manifests shall be made by some competent surgeon employed by the owners of the said vessels, and the manifests shall be verified by such surgeon before a United States consular officer or other officer authorized to administer oaths: *Provided*, That if any changes in the condition of such aliens occur or develop during the voyage of the vessel on which they are traveling, such changes shall be noted on the manifest before the verification thereof. [39 Stat. L. 884].

SEC. 14. [Failure to deliver manifests, etc.—penalty—refusal of clearance.] That it shall be unlawful for the master or commanding officer of any vessel bringing aliens into or carrying aliens out of the United States to refuse or fail to deliver to the immigration officials the accurate and full manifests or statements or information regarding all aliens on board or taken on board such vessel required by this Act, and if it shall appear to the satisfaction of the Secretary of Labor that there has been such a refusal or failure, or that the lists delivered are not accurate and full, such master or commanding officer shall pay to the collector of customs at the port of arrival or departure the sum of \$10 for each alien concerning whom such accurate and full manifest or statement or information is not furnished, or concerning whom the manifest or statement or information is not prepared and sworn to as prescribed by this Act. No vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while it remains unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. [39 Stat. L. 884.]

SEC. 15. [Examination of aliens on arrival—duties of immigration officers—removal from vessels.] That upon the arrival at a port of the United States of any vessel bringing aliens it shall be the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens, or said immigration officials may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels, the transportation lines, masters, agents, owners or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case

such aliens remain on board, would under the provisions of this Act bind the said vessels, transportation lines, masters, agents, owners, or consignees: *Provided*, That where removal is made to premises owned or controlled by the United States, said vessels, transportation lines, masters, agents, owners, or consignees, and each of them, shall, so long as detention there lasts, be relieved of responsibility for the safekeeping of such aliens. Whenever a temporary removal of aliens is made the vessels or transportation lines which brought them and the masters, owners, agents, and consignees of the vessel upon which they arrive shall pay all expenses of such removal and all expenses arising during subsequent detention, pending decision on the aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the line or to the vessel which brought them, such expenses to include those of maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel in the event of deportation, excepting only where they arise under the terms of any of the provisos of section eighteen hereof. Any refusal or failure to comply with the provisions hereof shall be punished in the manner specified in section eighteen of this Act. [39 Stat. L. 885.]

SEC. 16. [Examination of aliens — by whom made — procedure — evidence — witnesses.] That the physical and mental examination of all arriving aliens shall be made by medical officers of the United States Public Health Service who shall have had at least two years' experience in the practice of their profession since receiving the degree of doctor of medicine, and who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the boards of special inquiry hereinafter provided for, any and all physical and mental defects or diseases observed by said medical officers in any such alien; or, should medical officers of the United States Public Health Service be not available, civil surgeons of not less than four years' professional experience may be employed in such emergency for such service upon such terms as may be prescribed by the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor. All aliens arriving at ports of the United States shall be examined by not less than two such medical officers at the discretion of the Secretary of Labor, and under such administrative regulations as he may prescribe and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had especial training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at all ports of entry designated by the Secretary of Labor, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens in whom insanity or mental defect is suspected, and the services of interpreters shall be provided for such examination. Any alien certified for insanity or mental defect may appeal to the board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and said alien may introduce before such board one expert medical witness at his own cost and expense. That the inspection, other than the physical and mental

examination, of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States, and the examination of aliens arrested within the United States under this Act, shall be conducted by immigrant inspectors, except as hereinafter provided in regard to boards of special inquiry. All aliens arriving at ports of the United States shall be examined by at least two immigrant inspectors at the discretion of the Secretary of Labor and under such regulations as he may prescribe. Immigrant inspectors are hereby authorized and empowered to board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States. Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary, to make a written record of such evidence; and any person to whom such an oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement in any way affecting or in relation to the right of any alien to admission, or readmission to, or to pass through, or to reside in the United States shall be deemed guilty of perjury and be punished as provided by section one hundred and twenty-five of the Act approved March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States." All aliens coming to the United States shall be required to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and become citizens thereof, and such other items of information regarding themselves as will aid the immigration officials in determining whether they belong to any of the excluded classes enumerated in section three hereof. Any commissioner of immigration or inspector in charge shall also have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector may, in the event of neglect or refusal to respond to a subpoena issued by any commissioner of immigration or inspector in charge or refusal to testify before said immigrant inspector, issue an order requiring such person to appear before said immigrant inspector, produce books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. That any person, including employees, officials, or agents of transportation companies, who shall assault, resist, prevent, impede, or interfere with any immigration official or employee in the performance of his duty under this Act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than one year, or by a fine of not more than \$2,000, or both; and any person who shall use any deadly or dangerous weapon in resisting any immigration official or employee in the performance of his duty shall be deemed guilty of a felony and shall, on conviction thereof,

be punished by imprisonment for not more than ten years. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Secretary of Labor is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. The decision of an immigrant inspector, if favorable to the admission of any alien, shall be subject to challenge by any other immigrant inspector, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investigation. [39 Stat. L. 885.]

For Penal Laws, § 125, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 437; 7 Fed. Stat. Ann. (2d ed.) 670.

SEC. 17. [Boards of special inquiry — appointment — duties — records — decision.] That boards of special inquiry shall be appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall from time to time designate as qualified to serve on such boards. When in the opinion of the Secretary of Labor the maintenance of a permanent board of special inquiry for service at any sea or land border port is not warranted, regularly constituted boards may be detailed from other stations for temporary service at such port, or, if that be impracticable, the Secretary of Labor shall authorize the creation of boards of special inquiry by the immigration officials in charge at such ports, and shall determine what Government officials or other persons shall be eligible for service on such boards. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor: *Provided, That*

the decision of a board of special inquiry shall be based upon the certificate of the examining medical officer, and, except as provided in section twenty-one hereof, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section three of this Act. [37 Stat. L. 887.]

SEC. 18. [Deportation of aliens — duty of master, etc., of vessels — violations — penalties.] That all aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Secretary of Labor immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; or knowingly to bring to the United States at any time within one year from the date of deportation any alien rejected or arrested and deported under any provision of this Act, unless prior to reembarkation the Secretary of Labor has consented that such alien shall reapply for admission, as required by section three hereof; and if it shall appear to the satisfaction of the Secretary of Labor that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of \$300 for each and every violation of any provision of said sections; and no vessel shall have clearance from any port of the United States while any such fine is unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. If the vessel by which any alien ordered deported came has left the United States and it is impracticable for any reason to deport the alien within a reasonable time by another vessel owned by the same interests, the cost of deportation may be paid by the Government and recovered by civil suit from any agent, owner, or consignee of the vessel: *Provided further*, That the Commissioner General of Immigration, with the approval of the Secretary of Labor, may suspend, upon conditions to be prescribed by the Commissioner General of Immigration, the deportation of any aliens found to have come in violation of any provision of this Act if, in his judgment, the testimony

of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this Act or other laws of the United States; and the cost of maintenance of any person so detained resulting from such suspension of deportation, and a witness fee in the sum of \$1 per day for each day such person is so detained, may be paid from the appropriation for the enforcement of this Act, or such alien may be released under bond, in the penalty of not less than \$500, with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required as a witness and for deportation. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: *Provided further*, That upon the certificate of an examining medical officer to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the appropriation for the enforcement of this Act, be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported: *Provided further*, That upon the certificate of an examining medical officer to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens. [39 Stat. L. 887.]

SEC. 19. [Deportation of aliens — time — classes deported.] That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with

the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions

of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final. [39 Stat. L. 889.]

SEC. 20. [Deportation of aliens — place — expense — procedure — masters, etc., of vessels — punishment.] That the deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the appropriation for the enforcement of this Act. A failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Labor to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section eighteen of this Act: *Provided*, That when in the opinion of the Secretary of Labor the mental or physical condition of such alien is such as to require personal care and attendance, the said Secretary shall when necessary employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed. Pending the final disposal of the case of any alien so taken into custody, he may be released under a bond in the penalty of not less than \$500 with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States. [20 Stat. L. 890.]

SEC. 21. [Conditional admission of alien — bond or deposit.] That any alien liable to be excluded because likely to become a public charge or

because of physical disability other than tuberculosis in any form or a loathsome or dangerous contagious disease may, if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Labor upon the giving of a suitable and proper bond or undertaking, approved by said Secretary, in such amount and containing such conditions as he may prescribe, to the United States and to all States, Territories, counties, towns, municipalities, and districts thereof, holding the United States and all States, Territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. In lieu of such bond, such alien may deposit in cash with the Secretary of Labor such amount as the Secretary of Labor may require, which amount shall be deposited by said Secretary in the United States Postal Savings Bank, a receipt therefor to be given the person furnishing said sum, showing the fact and object of its receipt and such other information as said Secretary may deem advisable. All accruing interest on said deposit during the time same shall be held in the United States Postal Savings Bank shall be paid to the person furnishing the sum for deposit. In the event of such alien becoming a public charge, the Secretary of Labor shall dispose of said deposit in the same manner as if same had been collected under a bond as provided in this section. In the event of the permanent departure from the United States, the naturalization, or the death of such alien, the said sum shall be returned to the person by whom furnished, or to his legal representatives. The admission of such alien shall be a consideration for the giving of such bond, undertaking, or cash deposit. Suit may be brought thereon in the name and by the proper law officers either of the United States Government or of any State, Territory, District, county, town, or municipality in which such alien becomes a public charge. [39 Stat. L. 891.]

SEC. 22. [Families of resident alien — admission.] That whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided*, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay

the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act. [39 Stat. L. 891.]

SEC. 23. [Commissioner General of Immigration — duties — aliens from foreign contiguous territory.] That the Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction he shall have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid, and to remove to their native country, at any time within three years after entry, at the expense of the appropriations for the enforcement of this Act, such as fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being so removed; he shall prescribe rules for the entry and inspection of aliens coming to the United States from or through Canada and Mexico, so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose. It shall be the duty of the Commissioner General of Immigration to detail officers of the Immigration Service from time to time as may be necessary, in his judgment, to secure information as to the number of aliens detained in the penal, reformatory, and charitable institutions (public and private) of the several States and Territories, the District of Columbia, and other territory of the United States, and to inform the officers of such institutions of the provisions of law in relation to the deportation of aliens who have become public charges. He may, with the approval of the Secretary of Labor, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail immigration officers for service in foreign countries; and, upon his request, approved by the Secretary of Labor, the Secretary of the Treasury may detail medical officers of the United States Public Health Service for the performance of duties in foreign countries in connection with the enforcement of this Act. The duties of commissioners of immigration and other immigration officials in charge of districts, ports, or stations shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction or with the approval of the Secretary of Labor: *Provided*, That no person, company, or transportation line engaged in carrying alien passengers for hire from Canada or Mexico to the United States, whether by land or water, shall be allowed to land any such passengers in the United States without providing suitable and approved landing stations, conveniently located, at the point or points of entry. The Commissioner General of Immigration is hereby authorized and empowered to prescribe the conditions, not inconsistent with law, under which the above-mentioned landing stations shall be deemed suitable

within the meaning of this section. Any person, company, or transportation line landing an alien passenger in the United States without compliance with the requirement herein set forth shall be deemed to have violated section eight of this Act, and upon conviction shall be subject to the penalty therein prescribed: *Provided further*, That for the purpose of making effective the provisions of this section relating to the protection of aliens from fraud and loss, and also the provisions of section thirty of this Act, relating to the distribution of aliens, the Secretary of Labor shall establish and maintain immigrant stations at such interior places as may be necessary, and, in the discretion of the said Secretary, aliens in transit from ports of landing to such interior stations shall be accompanied by immigrant inspectors: *Provided further*, That in prescribing rules and making contracts for the entry and inspection of aliens applying for admission from or through foreign contiguous territory, due care shall be exercised to avoid any discriminatory action in favor of foreign transportation companies transporting to such territory aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory of aliens brought thereto by them, to submit to and comply with all the requirements of this Act which would apply were they bringing such aliens directly to seaports of the United States, and, from and after the taking effect of this Act, no alien applying for admission from foreign contiguous territory shall be permitted to enter the United States unless upon proving that he was brought to such territory by a transportation company which had submitted to and complied with all the requirements of this Act, or that he entered, or has resided in, such territory more than two years prior to the date of his application for admission to the United States. [39 Stat. L. 893.]

SEC. 24. [Immigration inspectors, officers, etc.—appointment — compensation.] That immigrant inspectors and other immigration officers, clerks, and employees shall hereafter be appointed and their compensation fixed and raised or decreased from time to time by the Secretary of Labor, upon the recommendation of the Commissioner General of Immigration and in accordance with the provisions of the civil-service Act of January sixteenth, eighteen hundred and eighty-three: *Provided*, That said Secretary, in the enforcement of that portion of this Act which excludes contract laborers and induced and assisted immigrants, may employ, for such purposes and for detail upon additional service under this Act when not so engaged, without reference to the provisions of the said civil-service Act, or to the various Acts relative to the compilation of the Official Register, such persons as he may deem advisable and from time to time fix, raise, or decrease their compensation. He may draw annually from the appropriation for the enforcement of this Act \$110,000, or as much thereof as may be necessary, to be expended for the salaries and expenses of persons so employed and for expenses incident to such employment; and the accounting officers of the Treasury shall pass to the credit of the proper disbursing officer expenditures from said sum without itemized account whenever the Secretary of Labor certifies that an itemized account would

not be for the best interests of the Government: *Provided further*, That nothing herein contained shall be construed to alter the mode of appointing commissioners of immigration at the several ports of the United States as provided by the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, or the official status of such commissioners heretofore appointed. [39 Stat. L. 893.]

For the Act of Jan. 16, 1883, ch. 27, mentioned in this section, see 1 Fed. Stat. Ann. 809; 2 Fed. Stat. Ann. (2d ed.) 155.

For the Act of Aug. 18, 1894, ch. 301, mentioned in this section, see 3 Fed. Stat. Ann. 307; 3 Fed. Stat. Ann. (2d ed.) 629.

SEC. 25. [District courts — jurisdiction of prosecution — discontinuance.] That the district courts of the United States are hereby invested with full jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act. That it shall be the duty of the United States district attorney of the proper district to prosecute every such suit when brought by the United States under this Act. Such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with such violation may be found. That no suit or proceeding for a violation of the provisions of this Act shall be settled, compromised, or discontinued without the consent of the court in which it is pending, entered of record, with the reasons therefor. [39 Stat. L. 893.]

SEC. 26. [Immigrant stations — privileges — disposition — intoxicating liquors.] That all exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder, after public competition, notice of such competitive bidding having been made in two newspapers of general circulation for a period of two weeks, subject to such conditions and limitations as the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, may prescribe, and all receipts accruing from the disposal of privileges shall be paid into the Treasury of the United States. No such contract shall be awarded to an alien. No intoxicating liquors shall be sold at any such immigration station. [39 Stat. L. 894.]

SEC. 27. [Immigrant stations — preservation of peace and order — jurisdiction of local courts and officers.] That for the preservation of the peace and in order that arrests may be made for crimes under the laws of the States and Territories of the United States where the various immigrant stations are located, the officers in charge of such stations, as occasion may require, shall admit therein the proper State and municipal officers charged with the enforcement of such laws, and for the purpose of this section the jurisdiction of such officers and of the local courts shall extend over such stations. [39 Stat. L. 894.]

SEC. 28. [Anarchists, etc.— aiding entry — punishment.] That any person who knowingly aids or assists any anarchist or any person who believes

in or advocates the overthrow by force or violence of the Government of the United States, or who disbelieves in or is opposed to organized government, or all forms of law, or who advocates the assassination of public officials, or who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such anarchist or person aforesaid to enter therein, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

Any person who knowingly aids or assists any alien who advocates or teaches the unlawful destruction of property to enter the United States shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both such fine and imprisonment. [39 Stat. L. 894.]

SEC. 29. [International conference for agreements on immigration.] That the President of the United States is authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral, and physical examination of such aliens by American consuls or other officers of the United States Government at the ports of embarkation, or elsewhere; of securing the assistance of foreign Governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States, are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration. [39 Stat. L. 894.]

SEC. 30. [Bureau of Immigration — division of information — maintenance — duties.] That there shall be maintained a division of information in the Bureau of Immigration; and the Secretary of Labor shall provide such clerical and other assistance as may be necessary. It shall be the duty of said division to promote a beneficial distribution of aliens admitted into the United States among the several States and Territories desiring immigration. Correspondence shall be had with the proper officials of the States and Territories, and said division shall gather from all available sources useful information regarding the resources, products, and physical characteristics of each State and Territory, and shall publish such information in different languages and distribute the publications among all admitted aliens at the immigrant stations of the United States and to such other

persons as may desire the same. When any State or Territory appoints and maintains an agent or agents to represent it at any of the immigrant stations of the United States, such agents shall, under regulations prescribed by the Commissioner General of Immigration, subject to the approval of the Secretary of Labor, have access to aliens who have been admitted to the United States for the purpose of presenting, either orally or in writing, the special inducements offered by such State or Territory to aliens to settle therein. While on duty at any immigrant station such agents shall be subject to all the regulations prescribed by the Commissioner General of Immigration, who, with the approval of the Secretary of Labor, may, for violation of any such regulations, deny to the agent guilty of such violation any of the privileges herein granted. [39 Stat. L. 895.]

SEC. 31. [Crew of vessel — permitting alien member to land — punishment.] That any person, including the owner, agent, consignee, or master of any vessel arriving in the United States from any foreign port or place, who shall knowingly sign on the ship's articles, or bring to the United States as one of the crew of such vessel, any alien, with intent to permit such alien to land in the United States in violation of the laws and treaties of the United States regulating the immigration of aliens, or who shall falsely and knowingly represent to the immigration authorities at the port of arrival that any such alien is a bona fide member of the crew, shall be liable to a penalty not exceeding \$5,000, for which sum the said vessel shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. [39 Stat. L. 895.]

SEC. 32. [Allowing excluded alien to land from vessel — punishment.] That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding \$1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. [39 Stat. L. 895.]

SEC. 33. [Crew of vessel — alien members — paying off or discharging.] That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided*, That in case any such alien intends to reship

on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. [39 Stat. L. 896.]

SEC. 34. [Alien seamen — landing contrary to law — deportation.] That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. [39 Stat. L. 896.]

SEC. 35. [Aliens employed on vessel — freedom from disease, etc.— liability of owner, etc., for shipping afflicted employees.] That it shall be unlawful for any vessel carrying passengers between a port of the United States and a port of a foreign country, upon arrival in the United States, to have on board employed thereon any alien afflicted with idiocy, imbecility, insanity, epilepsy, tuberculosis in any form, or a loathsome or dangerous contagious disease, if it appears to the satisfaction of the Secretary of Labor, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel and that the existence of such affliction might have been detected by means of a competent medical examination at such time; and for every such alien so afflicted on board any such vessel at the time of arrival the owner, agent, consignee, or master thereof shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$50, and pending departure of the vessel the alien shall be detained and treated in hospital under supervision of immigration officials at the expense of the vessel; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine and while it remains unpaid: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine: *Provided further*, That such fine may, in the discretion of the Secretary of Labor, be mitigated or remitted. [39 Stat. L. 896.]

SEC. 36. [Aliens employed on vessel — duty of owner, etc., on arrival — lists and reports.] That upon arrival of any vessel in the United States from any foreign port or place it shall be the duty of the owner, agent, consignee, or master thereof to deliver to the principal immigration officer in charge of the port of arrival lists containing the names of all aliens

employed on such vessel, stating the positions they respectively hold in the ship's company, when and where they were respectively shipped or engaged, and specifying those to be paid off and discharged in the port of arrival; or lists containing so much of such information as the Secretary of Labor shall by regulation prescribe; and after the arrival of any such vessel it shall be the duty of such owner, agent, consignee, or master to report to such immigration officer, in writing, as soon as discovered, all cases in which any such alien has illegally landed from the vessel, giving a description of such alien, together with any information likely to lead to his apprehension; and before the departure of any such vessel it shall be the duty of such owner, agent, consignee, or master to deliver to such immigration officer a further list containing the names of all alien employees who were not employed thereon at the time of the arrival but who will leave port thereon at the time of her departure, and also the names of those, if any, who have been paid off and discharged, and of those, if any, who have deserted or landed; and in case of the failure of such owner, agent, consignee, or master so to deliver either of the said lists of such aliens arriving and departing, respectively, or so to report such cases of desertion or landing, such owner, agent, consignee, or master shall, if required by the Secretary of Labor, pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$10 for each alien concerning whom correct lists are not delivered or a true report is not made as above required; and no such vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, and, in the event such fine is imposed, while it remains unpaid; nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon deposit of a sum sufficient to cover such fine. [39 Stat. L. 896.]

SEC. 37. ["Person" defined — liability of corporation, etc., for act of director, etc.] That the word "person" as used in this Act shall be construed to import both plural and the singular, as the case may be, and shall include corporations, companies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any director, officer, agent, or employee of any corporation, company, or association acting within the scope of his employment or office shall in every case be deemed to be the act, omission, or failure of such corporation, company, or association, as well as that of the person acting for or in behalf of such corporation, company, or association. [39 Stat. L. 897.]

SEC. 38. [Time of taking effect — repeal of existing laws.] That this Act, except as otherwise provided in section three, shall take effect and be enforced on and after May first, nineteen hundred and seventeen. The Act of March twenty-sixth, nineteen hundred and ten, amending the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States; the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States, except section thirty-four thereof; the Act of March third, nineteen hundred and three, to regulate the immigration of aliens into the United States, except section thirty-four thereof; and all other Acts

and parts of Acts inconsistent with this Act are hereby repealed on and after the taking effect of this Act: *Provided*, That this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in section nineteen hereof, nor to repeal, alter, or amend section six, chapter four hundred and fifty-three, third session Fifty-eighth Congress, approved February sixth, nineteen hundred and five, nor to repeal, alter, or amend the Act approved August second, eighteen hundred and eighty-two, entitled "An Act to regulate the carriage of passengers by sea," and amendments thereto, except as provided in section eleven hereof: *Provided further*, That nothing contained in this Act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this Act, except as mentioned in the third proviso of section nineteen hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the laws or parts of laws repealed or amended by this Act are hereby continued in force and effect. [19 Stat. L. 897.]

See the note to section 1 of this Act, *supra*, p. 213.

For the Act of March 3, 1903, ch. 1012, repealed by this section, see 10 Fed. Stat. Ann. 102. This Act had previously been repealed by the Act of Feb. 20, 1907, ch. 1134, likewise repealed by this section. For this last named Act see 1909 Supp. Fed. Stat. Ann. 161; 3 Fed. Stat. Ann. (2d ed.) 637.

For the Act of March 26, 1910, ch. 128, repealed by this section, see 1912 Supp. Fed. Stat. Ann. 89. This Act constituted an amendment of the previously cited Act of Feb. 20, 1907, ch. 1134, §§ 2 and 3, and is incorporated therein in 3 Fed. Stat. Ann. (2d ed.) 640, 649.

For the Act of Feb. 6, 1905, ch. 453, § 6, mentioned in the proviso of this section, see 10 Fed. Stat. Ann. 267; 7 Fed. Stat. Ann. (2d ed.) 1153.

For the Act of Aug. 2, 1882, ch. 374, mentioned in the proviso of this section, see 1 Fed. Stat. Ann. 720; 2 Fed. Stat. Ann. (2d ed.) 5.

[SEC. 1.] * * * [Enforcement of immigration laws — horses and motor vehicles.] That the purchase, use, maintenance, and operation of horses and motor vehicles required in the enforcement of the immigration * * * laws outside of the District of Columbia may be contracted for and the cost thereof paid from the appropriation for the execution of those laws, under such terms and conditions as the Secretary of Labor may prescribe. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

Joint Resolution Authorizing the readmission to the United States of certain aliens who have been conscripted or have volunteered for service with the military forces of the United States or cobelligerent forces.

[Res. of June 29, 1918, No. —, — Stat. L. —.]

[Classes of aliens excluded — admission after military or naval service with United States or cobelligerents — application — disabilities acquired in service — head tax.] That, notwithstanding the provisions

of section three of the immigration Act of February fifth, nineteen hundred and seventeen, excluding from the United States aliens who are likely to become a public charge, or who are physically defective, or who are contract laborers, or who have come in consequence of advertisements for labor printed, published, or distributed in a foreign country, or who are assisted by others to come, or whose ticket or passage is paid for with the money of another or by any corporation, association, society, municipality, or foreign government, or who are stowaways, or who are illiterate, aliens lawfully resident in the United States when heretofore or hereafter enlisted or conscripted for the military service of the United States; and aliens lawfully resident in the United States who, prior to April sixth, nineteen hundred and seventeen, declared their intention to become citizens of the United States, and who have enlisted for service with Czecho-Slovak, Polish, or other independent forces attached to the United States Army or to the army of any one of the cobelligerents of the United States in the present war, who may, within one year after the termination of the war, apply for readmission to this country, after being honorably discharged or granted furlough abroad by the proper military authorities, or after being rejected on final examination in connection with their enlistment or conscription, shall be readmitted; and that any alien of either of the two foregoing descriptions who would otherwise be excluded under said section of the immigration Act on the ground that he is idiotic, imbecile, feeble-minded, epileptic, insane, or has had one or more attacks of insanity, or on the ground that he is afflicted with constitutional psychopathic inferiority, tuberculosis, a loathsome or dangerous contagious disease, or mental defect, shall be readmitted if it is proved that the disability was acquired while the alien was serving in the military forces of the United States or in an independent force of the kind hereinbefore described, if such alien returns to a port of the United States within one year after the termination of the war; and that the head tax provided in the immigration Act of February fifth, nineteen hundred and seventeen, shall not be collected from aliens readmitted into the United States under the provisions of this resolution. [— *Stat. L.* —]

The Act of Feb. 5, 1917, ch. 29, § 3, mentioned in the text, is given *supra*, p. 214.

IMPORTS AND EXPORTS

Act of June 15, 1917, ch. —, 243.

Title IV. Interference with Foreign Commerce by Violent Means, 243.

Sec. 1. Nature of Interference — Punishment, 243.

VI. Seizure of Arms and Other Articles Intended for Export, 243.

Sec. 1. Seizure, When Authorized, 243.

2. Procedure on Seizure, 244.

3. Petition for Restoration, 244.

4. Libel Proceedings — Condemnation — Sale, 244.

5. Conformity of Proceedings to Those in Admiralty — Restoration of Property Seized, 245.

6. Limitation on Seizures, 245.

7. Restoration of Property Seized, 245.

8. Enforcement of Purposes of Title, 245.

*Title VII. Certain Exports in Time of War Unlawful, 245.**Sec. 1. Authority of President, 245.**2. Violation of Regulations Affecting Exports — Penalty, 246.**3. Refusal of Clearance of Vessel Loaded with Prohibited Articles of Export, 246.**Act of April 10, 1918, ch. —, 246.**Sec. 1. Export Trade — Promotion — Definition of Words Used in Act, 246.**2. Associations Engaged in Export Trade — Restraint of Trade, 247.**3. Stock or Other Capital of Export Trade Corporation — Acquisition by Any Corporation, 247.**4. Competitors in Export Trade — Unfair Methods, 248.**5. Information Furnished by Export Trade Associations to Federal Trade Commission — Authority of Commission over Association, 248.*

CROSS-REFERENCES

Intoxicating Liquors, see FOOD AND FUEL; INTERNAL REVENUE.
See generally UNFAIR COMPETITION.

TITLE IV.

INTERFERENCE WITH FOREIGN COMMERCE BY VIOLENT MEANS.

SEC. 1. [Nature of interference — punishment.] Whoever, with intent to prevent, interfere with, or obstruct or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States shall injure or destroy, by fire or explosives, such articles or the places where they may be while in such foreign commerce, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. [— *Stat. L.* —.]

The foregoing Title IV and the following Titles VI and VII are from an Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to these Titles and is given in CRIMINAL LAW, *ante*, p. 133.

TITLE VI.

SEIZURE OF ARMS AND OTHER ARTICLES INTENDED FOR EXPORT.

SEC. 1. [Seizure, when authorized.] Whenever an attempt is made to export or ship from or take out of the United States, any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war or other article, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed

of as hereinafter directed. If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States. [— *Stat. L.* —.]

This Title VI, together with the preceding Title IV and the following Title VII, is from an Act of June 15, 1917, ch. —, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to all of these Titles and is given in *CRIMINAL LAW*, *ante*, p. 133.

SEC. 2. [Procedure on seizure.] It shall be the duty of the person making any seizure under this title to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention of the property so seized, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that the property seized being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that the seizure was justified under the provisions of this title and issues his warrant accordingly, then the property shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is discharged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as hereinafter provided. [— *Stat. L.* —.]

SEC. 3. [Petition for restoration.] The owner or claimant of any property seized under this title may, at any time before condemnation proceedings have been instituted, as hereinafter provided, file his petition for its restoration in the district court of the United States, or the district court of the Canal Zone, or the court of first instance in the Philippine Islands, having jurisdiction over the place in which the seizure was made, whereupon the court shall advance the cause for hearing and determination with all possible dispatch, and, after causing notice to be given to the United States attorney for the district and to the person making the seizure, shall proceed to hear and decide whether the property seized shall be restored to the petitioner or forfeited to the United States. [— *Stat. L.* —.]

SEC. 4. [Libel proceedings — condemnation — sale.] Whenever the person making any seizure under this title applies for and obtains a warrant for the detention of the property, and (a) upon the hearing and determination of the petition of the owner or claimant restoration is denied, or (b) the owner or claimant fails to file a petition for restoration within thirty days after the seizure, the United States attorney for the district wherein it was seized, upon direction of the Attorney General, shall institute libel

proceedings in the United States district court of the district court of the Canal Zone or the the court of first instance of the Philippine Islands having jurisdiction over the place wherein the seizure was made, against the property for condemnation; and if, after trial and hearing of the issues involved, the property is condemned, it shall be disposed of by sale, and the proceeds thereof, less the legal costs and charges, paid into the Treasury [— *Stat. L.* —.]

SEC. 5. [Conformity of proceedings to those in admiralty — restoration of property seized.] The proceedings in such summary trials upon the petition of the owner or claimant of the property seized, as well as in the libel cases herein provided for, shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such libel cases, and all such proceedings shall be at the suit of and in the name of the United States: *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings herein provided for, and the execution and delivery of a good and sufficient bond in an amount double the value of the property seized, conditioned that it will not be exported or used or employed contrary to the provisions of this title, the court, in its discretion, may direct that it be delivered to the owners thereof or to the claimants thereof. [— *Stat. L.* —.]

SEC. 6. [Limitation on seizures.] Except in those cases in which the exportation of arms and munitions of war or other articles is forbidden by proclamation or otherwise by the President, as provided in section one of this title, nothing herein contained shall be construed to extend to, or interfere with any trade in such commodities, conducted with any foreign port or place wheresoever or with any other trade which might have been lawfully carried on before the passage of this title, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof. [— *Stat. L.* —.]

SEC. 7. [Restoration of property seized.] Upon payment of the costs and legal expenses incurred in any such summary trial for possession or libel proceedings, the President is hereby authorized, in his discretion, to order the release and restoration to the owner or claimant, as the case may be, of any property seized or condemned under the provisions of this title. [— *Stat. L.* —.]

SEC. 8. [Enforcement of purposes of title.] The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of this title. [— *Stat. L.* —.]

TITLE VII.

CERTAIN EXPORTS IN TIME OF WAR UNLAWFUL.

SEC. 1. [Authority of President.] Whenever during the present war the President shall find that the public safety shall so require, and shall

make proclamation thereof, it shall be unlawful to export from or ship from or take out of the United States to any country named in such proclamation any article or articles mentioned in such proclamation, except at such time or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however,* That no preference shall be given to the ports of one State over those of another. [— *Stat. L.* —.]

This Title VII, together with the preceding Titles IV and VI, is from an Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to these Titles and is given in *CRIMINAL LAW*, *ante*, p. 133.

SEC. 2. [Violation of regulations affecting exports — penalty.] Any person who shall export, ship, or take out, or deliver or attempt to deliver for export, shipment, or taking out, any article in violation of this title, or of any regulation or order made hereunder, shall be fined not more than \$10,000, or, if a natural person, imprisoned for not more than two years, or both; and any article so delivered or exported, shipped, or taken out, or so attempted to be delivered or exported, shipped, or taken out, shall be seized and forfeited to the United States; and any officer, director, or agent of a corporation who participates in any such violation shall be liable to like fine or imprisonment, or both. [— *Stat. L.* —.]

SEC. 3. [Refusal of clearance of vessel loaded with prohibited articles of export.] Whenever there is reasonable cause to believe that any vessel, domestic or foreign, is about to carry out of the United States any article or articles in violation of the provisions of this title, the collector of customs for the district in which such vessel is located is hereby authorized and empowered, subject to review by the Secretary of Commerce, to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart. Whoever, in violation of any of the provisions of this section shall take, or attempt to take, or authorize the taking of any such vessel, out of port or from the jurisdiction of the United States, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and her forbidden cargo shall be forfeited to the United States. [— *Stat. L.* —.]

An Act To promote export trade, and for other purposes.

[*Act of April 10, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Export trade — promotion — definition of words used in Act.**] That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in

the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. [— *Stat. L.* —.]

SEC. 2. [Associations engaged in export trade — restraint of trade.]

That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein. [— *Stat. L.* —.]

For the Act of July 2, 1890, ch. 647, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 644.

SEC. 3. [Stock or other capital of export trade corporation — acquisition by any corporation.] That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States. [— *Stat. L.* —.]

For the Act of Oct. 15, 1914, ch. 323, § 7, see 1916 Supp. Fed. Stat. Ann. 272; 9 Fed. Stat. Ann. (2d ed.) 738.

SEC. 4. [Competitors in export trade — unfair methods.] That the prohibition against “unfair methods of competition” and the remedies provided for enforcing said prohibition contained in the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States. [— *Stat. L.* —.]

For Act of Sept. 26, 1914, ch. 311, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

SEC. 5. [Information furnished by export trade associations to Federal Trade Commission — authority of Commission over association.] That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade

therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." [— *Stat. L.* —.]

For the Act of Sept. 26, 1914, ch. 311, creating the Federal Trade Commission, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

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[*Act of May 18, 1916, ch. 125, 39 Stat. L. 123.*]

[SEC. 1.] [Intoxicating liquors — regulation — evidence.] * * *

The provisions of sections twenty-one hundred and forty and twenty-one hundred and forty-one of the Revised Statutes of the United States shall also apply to beer and other intoxicating liquors named in the Act of January thirtieth, eighteen hundred and ninety-seven (Twenty-ninth Statutes at Large, page five hundred and six), and the possession by a person of intoxicating liquors in the country where the introduction is prohibited by treaty or Federal statute shall be *prima facie* evidence of unlawful introduction. [39 Stat. L. 124.]

For R. S. secs. 2140 and 2141, and the Act of Jan. 30, 1897, ch. 109, mentioned in the text, see 3 Fed. Stat. Ann. 384, 385, 386; 3 Fed. Stat. Ann. (2d ed.) 915, 917, 919.

See also the Act of March 2, 1917, ch. 146, § 1, *infra*, p. 260, and the Act of May 25, 1918, ch. —, § 1, *infra*, p. 264.

[Indian supplies — purchases — advertisement — former Act amended.]

* * * That section thirty-seven hundred and nine, Revised Statutes, in so far as that section requires that advertisement be made, shall apply only to those purchases and contracts for supplies or services, except personal services, for the Indian field service which exceed in amount the sum of \$50 each, and section twenty-three of the Act of June twenty-fifth, nineteen hundred and ten (Twenty-sixth Statutes at Large, page eight hundred and sixty-one), is hereby amended accordingly. [39 Stat. L. 126.]

For R. S. sec. 3709, mentioned in the text, see 6 Fed. Stat. Ann. 93; 1912 Supp. Fed. Stat. Ann. 307; 8 Fed. Stat. Ann. (2d ed.) 336.

For the Act of June 25, 1910, ch. 431, § 23, amended by the text, see 1914 Supp. Fed. Stat. Ann. 170; 3 Fed. Stat. Ann. (2d ed.) 791.

[Heirs to Indian property — determination — fee — partition — trusts.]

* * * That hereafter upon a determination of the heirs to any trust or restricted Indian property of the value of \$250 or more, or to any allotment, or after approval by the Secretary of any will covering such trust or restricted property, there shall be paid by such heirs, or by the beneficiaries under such will, or from the estate of the decedent, or from the proceeds of sale of the allotment, or from any trust funds belonging to the estate of the decedent, the sum of \$15, which amount shall be accounted for and paid into the Treasury of the United States and a report shall be made annually to Congress by the Secretary of the Interior, on or before the first Monday of December, of all moneys collected and deposited, as herein provided: *Provided further*, That if the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set

apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. [39 Stat. L. 127.]

[Permits to go into Texas — repeal of statute prohibiting.] * * *

That so much of section four of the Act of May eleventh, eighteen hundred and eighty (Twenty-first Statutes at Large, page one hundred and thirty-two), as prohibits granting permission in writing or otherwise to any Indian or Indians on any Indian reservation to go into the State of Texas, under any pretext whatever, be, and the same is hereby, repealed. [39 Stat. L. 128.]

For the Act of May 11, 1880, ch. 85, repealed by the text, see 3 Fed. Stat. Ann. 378; 3 Fed. Stat. Ann. (2d ed.) 794 note.

[Arid allotted lands — lease.] * * * That whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of irrigation and that the allottee, by reason of old age or other disability, can not personally occupy or improve his allotment or any portion thereof, such lands or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior. [39 Stat. L. 128.]

[Indian tribal funds — allotment and distribution — former Act amended.] That section two of the Act approved March second, nineteen hundred and seven (Thirty-fourth Statutes at Large, page twelve hundred and twenty-one), entitled "An Act providing for the allotment and distribution of Indian tribal funds," be, and the same is hereby, amended so as to read as follows:

"That the pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe:" *Provided*, That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior. [39 Stat. L. 128.]

For the Act of March 2, 1907, ch. 2523, § 2, amended by the text, see 1909 Supp. Fed. Stat. Ann. 228; 3 Fed. Stat. Ann. (2d ed.) 789.

[Bidders for supplies, etc., for Indian Service — certified checks to accompany bids — former Act amended.] Section nine of the Act of March third, eighteen hundred and seventy-five (Eighteenth Statutes at Large, page four hundred and fifty), is hereby amended so as to read as follows:

"That hereafter all bidders under any advertisement published by the Commissioner of Indian Affairs for proposals for goods, supplies, transportation, and so forth, for and on account of the Indian Service, whenever the value of the goods, supplies, and so forth, to be furnished, or the trans-

portation to be performed, shall exceed the sum of \$5,000, shall accompany their bids with a certified check, draft, or cashier's check, payable to the order of the Commissioner of Indian Affairs, upon some United States depository or some one of such solvent national banks as the Secretary of the Interior may designate, or by an acceptable bond in favor of the United States, which check, draft, or bond shall be for five per centum of the amount of the goods, supplies, transportation, and so forth, as aforesaid; and in case any such bidder, on being awarded a contract, shall fail to execute the same with good and sufficient sureties according to the terms on which such bid was made and accepted, such bidder, or the sureties on his bond, shall forfeit the amount so deposited or guaranteed to the United States, and the same shall forthwith be paid into the Treasury of the United States; but if such contract shall be duly executed, as aforesaid, such draft, check, or bond so deposited shall be returned to the bidder." [39 Stat. L. 129.]

For the Act of March 3, 1875, ch. 132, § 9, amended by the text, see 6 Fed. Stat. Ann. 114; 3 Fed. Stat. Ann. (2d ed.) 782.

SEC. 9. [Chippewa Indians — permanent fund advancements — lien.]

* * * That the Secretary of the Interior, under such rules and regulations as he may prescribe, is hereby authorized to advance to any individual Chippewa Indian in the State of Minnesota entitled to participate in the permanent fund of the Chippewa Indians of Minnesota one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: *Provided*, That the Secretary of the Interior, under such rules and regulations as he may prescribe, may use for or advance to any Chippewa Indian in the State of Minnesota entitled to share in said fund who is incompetent, blind, crippled, decrepit, or helpless from old age, disease, or accident, one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: *Provided further*, That any money received hereunder by any member of said tribe or used for his or her benefit shall be deducted from the share of said member in the permanent fund of the said Chippewa Indians in Minnesota to which he or she would be entitled: *Provided further*, That the funds hereunder to be paid to Indians shall not be subject to any lien or claim of attorneys or other third parties. [39 Stat. L. 135.]

[Red Lake Indian Forest — creation of forest reserve — allotments — administration.] * * *

To carry into effect the Act entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota, approved January fourteenth, eighteen hundred and eighty-nine, to provide for the establishment and administration of a forest reserve and for the sale of timber within the Red Lake Indian Reservation, Minnesota," that the following-described lands within the Red Lake Indian Reservation, Minnesota, be, and the same hereby are, created into a forest reserve, to be known as the Red Lake Indian Forest: Townships one hundred and fifty and one hundred and fifty-one north, ranges thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six west, and townships one hundred and fifty-two and one hundred and fifty-three north, ranges thirty-two, thirty-

three, and thirty-four west of the fifth principal meridian, except the lands in townships one hundred and fifty-one north, range thirty-six west, which lie north of the north line of sections twenty-six to thirty, inclusive, and except all lands within sections four, five, six, seven, eight, nine, and eighteen, in township one hundred and fifty-three north, range thirty-four west. The provisions of this paragraph shall not apply to any lands which have heretofore been reserved for school, agency, church, or town-site purposes or granted to private parties or corporations within the area described, nor to the town site of Red Lake, for the creation of which provision is made herein: *Provided*, That when any of said lands are no longer needed for the purpose for which they are reserved, the Secretary of the Interior may declare such lands to be a part of the Red Lake Indian Forest.

That lands within said Red Lake Indian Forest, which are not covered with standing and growing merchantable pine timber and which are suited for the production of agricultural crops and which are fronting upon a lake shore, may be allotted to individual Red Lake Indians: *Provided*, That no such allotment shall exceed eighty acres nor have more than eighty rods fronting upon a lake shore: *Provided further*, That in case an Indian has improved and cultivated more than eighty acres, his allotment may embrace his improvements to the extent of one hundred and sixty acres.

That said forest shall be administered by the Secretary of the Interior in accordance with the principles of scientific forestry, with a view to the production of successive timber crops thereon, and he is hereby authorized to sell and manufacture only such standing and growing pine and oak timber as is mature and has ceased to grow, and he is also authorized to sell and manufacture form [from] time to time such other mature and marketable timber as he may deem advisable, and he is further authorized to construct and operate sawmills for the manufacture of the timber into merchantable products and to employ such persons as he shall find necessary to carry out the purposes of the foregoing provisions, including the establishment of nurseries and the purchase of seeds, seedlings, and transplants when needed for reforestation purposes: *Provided*, That all timber sold under the provisions herein shall be sold on what is known as the bank scale: *Provided further*, That no contract shall be made for the establishment of any mill, or to carry on any logging or lumbering operations which shall constitute a charge upon the proceeds of the timber, until an estimate of the cost thereof shall have first been submitted to and approved by Congress.

That the Secretary of the Interior may issue permits or grant leases on such lands for camping or farming. No permit shall be issued for a longer term than one year and no lease shall be executed for a longer term than five years. Every permit or lease issued under authority of this Act to Indians, or to other persons or corporations, and every patent for an allotment within the limits of the forest created by section one, shall reserve to the United States the right to cross the land covered thereby with logging roads or railroads, to use the shore line, or to erect thereon and use such structures as shall be necessary to the proper and economical management of the Indian Forest created by this Act; and the Secretary of the Interior may reserve from allotment tracts considered necessary for such administration.

After the payment of all expenses connected with the administration of these lands as herein provided, the net proceeds therefrom shall be covered into the Treasury of the United States to the credit of the Red Lake Indians and draw interest at the rate of four per centum per annum. The interest on this fund may be used by the Secretary of the Interior in such manner as he shall consider most advantageous and beneficial to the Red Lake Indians. Expenditure from the principal shall be made only after the approval by Congress of estimates submitted by the said Secretary.

That the Secretary of the Interior shall select and set apart an area not exceeding two hundred acres, in sections twenty, twenty-one, twenty-eight, and twenty-nine, township one hundred and fifty-one north, range thirty-four west, cause the lands thus selected to be surveyed and platted into suitable lots, streets, and alleys, and dedicate said streets and alleys and such lots and parcels as he may consider necessary to public uses. The lands thus selected shall not be allotted, but held as an Indian town site subject to further legislation by Congress.

That the timber on lands of the Red Lake Indian Reservation outside the boundaries of the forest created by this Act may be sold under regulations prescribed by the Secretary of the Interior, and the proceeds administered under the provisions of the general deficiency Act of March third, eighteen hundred and eighty-three (Twenty-second Statutes at Large, page five hundred and ninety), and the Indian appropriation Act of March second, eighteen hundred and eighty-seven (Twenty-fourth Statutes at Large, page four hundred and sixty-three). [39 Stat. L. 137.]

The Act mentioned in the first paragraph of the text is the Act of Jan. 14, 1889, ch. 24, 25 Stat. L. 642.

For the Act of March 3, 1883, ch. 141, mentioned in the last paragraph of the text, see 3 Fed. Stat. Ann. 363; 3 Fed. Stat. Ann. (2d ed.) 785.

For the Act of March 2, 1887, ch. 320, also mentioned in the last paragraph of the text, see 3 Fed. Stat. Ann. 363; 3 Fed. Stat. Ann. (2d ed.) 785 note.

SEC. 11. [Flathead Indian Reservation — homestead entry.] * * *

That lands on the Flathead Indian Reservation in Montana valuable for agricultural or horticultural purposes, heretofore classified as timber lands, may, in the discretion of the Secretary of the Interior, be appraised and opened to homestead entry under regulations prescribed by him, upon condition that homestead entrymen shall at the time of making their original homestead entries pay the full value of the timber found on the land at the time that the appraisement of the land itself is made, such payment to be in addition to the appraised price of the lands apart from the timber. [39 Stat. L. 139.]

SEC. 17. [Fort Berthold Indian Reservation — sale of surplus lands — disposition of proceeds.] * * *

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, from time to time, in his discretion, all moneys derived from the sale and disposition of surplus lands, within the limits of the former Fort Berthold Indian Reservation, North Dakota, arising under the provisions of the Act approved June first, nineteen hundred and ten (Thirty-sixth Statutes at Large, page four hundred and fifty-five), together with the accrued interest

thereon, and distribute the same per capita to the Indians entitled thereto in the following manner, to wit: To competent Indians in cash share and share alike and to incompetent Indians by depositing equal shares to their individual credit in banks bonded and designated as depositories for individual Indian moneys, subject to expenditure for the benefit of the Indians entitled under such rules as the Secretary of the Interior may prescribe, and hereafter annual distributions shall similarly be made of funds accruing under the provisions of the act herein referred to. [39 Stat. L. 144.]

The Act mentioned in this section is the Act of June 1, 1910, ch. 264, 36 Stat. L. 455.

SEC. 25. [Bad River and Lac du Flambeau Indian Reservations — sale of timber — proceeds — disposition.] * * * That without bias or prejudice to the rights or interests of any party to the litigation now pending, the Secretary of the Interior be, and he hereby is, authorized to sell the timber on the so-called "school lands" and "swamp lands" within the boundaries of the Bad River and Lac du Flambeau Indian Reservations in Wisconsin, and to which the State of Wisconsin has asserted a claim; to keep a separate account of the proceeds of such sale with each legal subdivision of such land and to deposit the said proceeds at interest in a national bank, bonded for the safe-keeping of individual Indian moneys, to be paid over, together with the interest thereon, to the party or parties who shall finally be adjudged to be entitled to such fund: *Provided*, That the consent of the State or parties claiming title therefrom be obtained before any such sale shall be made. [39 Stat. L. 157.]

[Lac Court Oreilles Reservation — flowage rights — lease or grant.] * * * With the consent of the Indians of the Lac Court Oreilles Tribe, to be obtained in such manner as the Secretary of the Interior may require, flowage rights on the unallotted tribal lands, and, with the consent of the allottee or of the heirs of any deceased allottee and under such rules and regulations as the Secretary of the Interior may prescribe, flowage rights on any allotted lands in the Lac Court Oreilles Reservation, in the State of Wisconsin, may be leased or granted for storage-reservoir purposes. The tribe, as a condition to giving its consent to the granting or leasing of flowage rights on tribal lands, and any allottee or the heirs of any deceased allottee, as a condition to giving his or their consent to the leasing or granting of flowage rights on their respective allotments, may determine, subject to the approval of the Secretary of the Interior, what consideration or rental shall be received for such flowage rights, and in what manner and for what purposes such consideration or rental shall be paid or expended; and the consideration or rental shall be paid or expended under such rules and regulations as the Secretary of the Interior may prescribe. [39 Stat. L. 157.]

SEC. 27. [Tribal funds — receipts and expenditures — report to Congress — specific appropriation.] On the first Monday in December, nineteen hundred and seventeen, and annually thereafter, the Secretary of the Treasury shall transmit to the Speaker of the House of Representatives estimates of the amounts of the receipts to, and expenditures which the

Secretary of the Interior recommends to be made for the benefit of the Indians from, all tribal funds of Indians for the ensuing fiscal year; and such statement shall show (first) the total amounts estimated to be received from any and all sources whatsoever, which will be placed to the credit of each tribe of Indians, in trust or otherwise, at the close of the ensuing fiscal year, (second) an analysis showing the amounts which the Federal Government is directed and required by treaty stipulations and agreements to expend from each of said funds or from the Federal Treasury, giving references to the existing treaty or agreement or statute, (third) the amounts which the Secretary of the Interior recommends to be spent from each of the tribal funds held in trust or otherwise, and the purpose for which said amounts are to be expended, and said statement shall show the amounts which he recommends to be disbursed (a) for per capita payments in money to the Indians, (b) for salaries or compensation of officers and employees, (c) for compensation of counsel and attorney fees, and (d) for support and civilization: *Provided*, That thereafter no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided further*, That this shall not change existing law with reference to the Five Civilized Tribes. [39 Stat. L. 158.]

An Act To amend the Act of March twenty-second, nineteen hundred and six, entitled "An Act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes."

[Act of Aug. 31, 1916, ch. 424, 39 Stat. L. 672.]

[Colville Indian Reservation, Wash.—sale, etc., of unallotted lands — reservations — introduction of intoxicants — former Act amended.] That section seven of the Act of March twenty-second, nineteen hundred and six (Thirty-fourth Statutes at Large, page eighty), entitled "An Act to authorize the sale and disposition of surplus unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes," be, and the same is hereby, amended to read as provided herein, and that one section, numbered thirteen as hereinafter provided, be, and the same hereby is, added to the said Act.

"SEC. 7. That the Secretary of the Interior may reserve from allotment or other disposition and set apart such lands of the Colville Reservation as in his judgment may be necessary, said lands not to exceed four sections in all, for school, agency, sawmill, gristmill, and other mill or administrative purposes, said lands to remain reserved so long as needed for such respective purposes. And the Secretary of the Interior may also set apart for temporary use and occupancy such lands as he may deem necessary for mission purposes among said Indians, not to exceed in any instance, except as hereinafter specifically provided, forty acres of land lying at any one point, not included in any town site heretofore provided

for, said lands to remain so reserved as long as actually required and used exclusively for mission purposes, subject, however, to such regulations as the said Secretary may deem proper to make: *Provided*, That the Secretary of the Interior is further authorized to issue a patent in fee simple to the properly designated missionary board or corporation which now maintains the Saint Mary's School and Mission for Colville Indians, for the sixty acres of land in township thirty-three north, range twenty-seven east of the Willamette meridian, which is the site of said Saint Mary's School and Mission plant; and in addition thereto the said board or corporation shall have the privilege of using for training purposes and support of said school and mission the lands already formally set apart for such purposes, together with those several tracts selected and used for school or mission purposes which the mission authorities, prior to nineteen hundred and fourteen, described and requested to have set apart, such privilege to continue so long as the lands are required and used exclusively for Indian mission and school purposes. The Secretary of the Interior is further authorized to reserve as an Indian cemetery or cemeteries any lands within said reservation, not to exceed fifty acres in all, and not otherwise formally or officially appropriated, which have heretofore been or are now being used by the Indians for burial purposes.

" SEC. 13. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress." [39 Stat. L. 672.]

For the Act of March 22, 1906, ch. 1126, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 188.

An Act To amend an Act entitled "An Act to provide for the payment of drainage assessments on Indian lands in Oklahoma."

[Act of Aug. 31, 1916, ch. 419, 39 Stat. L. 671.]

[Oklahoma—drainage assessments—payment—former Act amended.]

That an Act entitled "An Act to provide for the payment of drainage assessments on Indian lands in Oklahoma," approved July nineteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page one hundred and ninety-four), be, and the same is hereby, amended so as to confer upon the Secretary of the Interior authority to subject Government lands of the Sac and Fox Indian Agency or the lands of the Sac and Fox Indian School or Agency in the Sac and Fox Agency of Lincoln County, Oklahoma, to all of the provisions touching the organization of drainage districts and the construction of drain ditches and canals across said lands, or assessment for benefits conferred by the construction of said canals or ditches of the Deep Fork drainage district of Lincoln County, Oklahoma, and that the provisions of said Act shall apply in all particulars to the Sac and Fox Indian School lands and the lands of the Sac and Fox Indian Agency of said Lincoln County, Oklahoma. [39 Stat. L. 671.]

For the Act of July 19, 1912, ch. 240, amended by this Act, see 1914 Supp. Fed. Stat. Ann. 168.

An Act Providing that Indian schools may be maintained without restriction as to annual rate of expenditure per pupil.

[*Act of Sept. 7, 1916, ch. 455, 39 Stat. L. 741.*]

[**Schools — rate of expenditure per pupil.**] That all moneys appropriated or available for Indian school purposes may be expended without restriction as to per capita expenditure for the annual support and education of any one pupil in any Indian school: *Provided*, That in no event shall the per capita cost at any one school exceed the sum of \$200 per annum. [*39 Stat. L. 741.*]

With reference to this Act, the Deficiency Appropriation Act of March 28, 1918, ch. —, § 1, — Stat. L. —, contained a provision as follows:

“That the operation of the Act of September seventh, nineteen hundred and sixteen (Thirty-fifth Statutes at Large, page seven hundred and forty-one), limiting annual expenditures for support and education of pupils in Indian schools to \$200 per capita, is hereby suspended during the fiscal year ending June thirtieth, nineteen hundred and eighteen: *Provided further*, That no part of this sum shall be expended upon improvements or used to increase the compensation of employees.”

The reference in the quoted Act to “Thirty-fifth Statutes at Large,” etc., is evidently intended for Thirty-ninth Statutes at Large.

An Act To authorize agricultural entries on surplus coal lands in Indian reservations.

[*Act of Feb. 27, 1917, ch. 133, 39 Stat. L. 944.*]

[**SEC. 1.**] [**Indian reservations — surplus coal lands — agricultural entries.**] That in any Indian reservation heretofore or hereafter opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same: *Provided*, That such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose. [*39 Stat. L. 944.*]

SEC. 2. [**Application for entry — contents — patent.**] That any applicant for such lands shall state in his application that the same is made in accordance with and subject to the provisions and reservations of this Act, and upon submission of satisfactory proof of full compliance with the provisions of law under which application or entry is made and of this Act shall be entitled to a patent to the lands applied for and entered by him, which patent shall contain a reservation to the United States of all the coal deposits in the lands so patented, together with the right to prospect for, mine, and remove the same. [*39 Stat. L. 945.*]

SEC. 3. [Coal deposits — disposal by United States.] That if the coal-land laws have been or shall be extended over lands applied for, entered, or patented hereunder the coal deposits therein shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands applied for, entered, or patented under this Act for the purpose of prospecting for coal thereon, if such coal deposits are then subject to disposition, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such lands, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine coal for personal use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications made under the applicable land laws of the United States for any such surplus lands which have been or may be classified as coal lands with a view of disproving such classification and securing a patent without reservation. [39 Stat. L. 945.]

SEC. 4. [Net proceeds from sale of surplus lands — Five Civilized Tribes.] That the net proceeds derived from the sale and entry of such surplus lands in conformity with the provisions of this Act shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation: *Provided*, That the provisions of this Act shall not apply to the lands of the Five Civilized Tribes of Indians in Oklahoma. [39 Stat. L. 945.]

An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and eighteen.

[Act of March 2, 1917, ch. 146, 39 Stat. L. 969.]

[SEC. 1.] **[Intoxicating liquors — conveyances transporting — seizure.]**
* * * That automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian

country, or where the introduction is prohibited by treaty or Federal statute, whether used by the owner thereof or other person, shall be subject to the seizure, libel, and forfeiture provided in section twenty-one hundred and forty of the Revised Statutes of the United States. [39 Stat. L. 970.]

For R. S. sec. 2140 mentioned in the text see 3 Fed. Stat. Ann. 385; 3 Fed. Stat. Ann. (2d ed.) 915.

See also the Act of May 18, 1916, ch. 125, § 1, *supra*, p. 251; and the Act of May 25, 1918, ch. —, § 1, *infra*, p. 264.

Constitutionality.—This paragraph is constitutional. If Congress may prohibit the introduction of liquors from outside the state into the Indian territory portion of the state, it can certainly, as a means of enforcing this law and subserving the public policy which is involved in it, provide that the vehicles used in such illegal introduction shall be forfeited to the government, regardless of ownership, just as it has by numerous acts ever since the institution of this government provided for the forfeiture

of articles used in violation of the customs and revenue laws. That it has such power in the enforcement of the customs and revenue laws is settled by a long line of decisions. *U. S. v. One Buick Roadster Automobile*, 244 Fed. 961.

Scope.—This paragraph does not attempt to enlarge the right of officers to make search without warrant in other than Indian country. *U. S. v. One Buick Roadster Automobile*, 244 Fed. 961.

[Indian lands purchased for school or other administrative purposes — sale to highest bidder — proceeds.] * * * That the Secretary of the Interior is hereby authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe, any tract or part of a tract of land purchased by the United States for day school or other Indian administrative uses, not exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the net proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: *Provided*, That where the purchase price was paid from tribal funds, such proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians. [39 Stat. L. 973.]

[Rights of way through Indian lands for pipe line — former Act amended.] * * * That the following provision of the Act approved March eleventh, nineteen hundred and four (Thirty-third Statutes, page sixty-five), authorizing the Secretary of the Interior to grant rights of way across Indian lands for the conveyance of oil and gas, to wit: "No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior," be, and the same is hereby, amended to read as follows:

"Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided*, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines." [39 Stat. L. 973.]

For the Act of March 11, 1904, ch. 505, amended by the text, see 10 Fed. Stat. Ann. 167; 3 Fed. Stat. Ann. (2d ed.) 903.

An Act Providing for the sale of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations, Oklahoma.

[*Act of Feb. 8, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Mineral lands in Choctaw and Chickasaw Nations — sale of coal and asphalt deposits — appraisement.]** That the Secretary of the Interior is hereby authorized to sell the coal and asphalt deposits, leased and unleased, in the segregated mineral area of the Choctaw and Chickasaw Nations, in Oklahoma, in the manner hereinafter set forth.

Before offering such coal and asphalt deposits for sale the Secretary of the Interior, under such rules and regulations as he may prescribe, shall cause the same to be appraised. Such appraisement, both as to leased and unleased lands, shall be described in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and shall be completed within six months after the passage of this Act. [*— Stat. L. —.*]

SEC. 2. **[Manner and terms of sale.]** That the sale of such deposits shall be thoroughly advertised, and shall not later than six months from the final appraisement be offered for sale to the highest bidder at public auction in tracts to conform with such appraisement at not less than the appraised value so fixed, except that isolated tracts of less than nine hundred and sixty acres may be sold separately under like provisions: *Provided*, That twenty per centum of the purchase price shall be paid in cash, and the remainder shall be paid in four equal annual payments from the date of the sale, and all deferred payments on all deposits sold under the provisions of this Act shall bear interest at the rate of five per centum per annum, and shall mature and become due before the expiration of four years after the date of such sale. [*— Stat. L. —.*]

SEC. 3. **[Resale.]** That immediately after the expiration of one year after the coal and asphalt deposits shall have been offered for sale, or forfeited for nonpayment under the terms of the sale, the Secretary of the Interior, under rules and regulations to be prescribed by him, shall readvertise and cause to be sold to the highest bidder at public auction, in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and at not less than said appraised value, retaining the right to reject any or all bids, all coal and asphalt deposits remaining unsold and all coal and asphalt deposits forfeited by reason of such nonpayment of any part of the purchase price: *Provided*, That at the expiration of six months thereafter the Secretary of the Interior may again readvertise and offer the same for final sale to the highest bidder at public auction, upon such terms as he may prescribe and at such valuation, independent of such appraised value, as he may fix. [*— Stat. L. —.*]

SEC. 4. **[Deposits of coal or asphalt on leased lands.]** That such deposits of coal or asphalt on the leased lands shall be sold subject to all rights of the lessee and that any person acquiring said deposits of coal

or asphalt shall take the same subject to said rights and acquire the same under the express understanding and agreement that the Department of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over the operation of said mines by reason of the Indian ownership of said property and that said properties thereafter shall be operated under and in conformity with such laws as may be applicable thereto, and that advance royalty paid by any lessee and standing to the credit of said lessee shall be credited by said purchaser to the extent of the amount thereof, and that no royalties shall be paid by said lessee to said purchaser until the credit so given shall be exhausted at the rate of 8 cents per ton mine run, and that the royalty to be paid thereafter by said lessee to said purchaser shall be 8 cents per ton mine run of coal, and that any lessee may, at any time after completion of such sale, transfer or dispose of his leasehold interest without any restriction whatever; and that any lessee shall have the preferential right, provided the same is exercised within ninety days after the approval of the completion of the appraisement of the minerals as herein provided, to purchase at the appraised value any or all of the surface of the lands lying within such lease held by him and heretofore reserved by order of the Secretary of the Interior and upon the terms as above provided, and shall also have the preferential right, except as herein otherwise provided, to purchase the coal deposits embraced in any lease held by such lessee by taking same at the highest price offered by any responsible bidder at public auction at not less than appraised value; and if any lessee becomes the purchaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price thereof, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal on any other lease which he may own and operate: *And provided*, That nothing herein contained shall be construed as limiting or curtailing the rights of any lessee or owner of mineral deposits from acquiring additional surface lands for mining operations as provided by the Act of Congress of February nineteenth, nineteen hundred and twelve: *Provided further*, That no person or corporation shall be permitted to acquire more than four tracts of nine hundred and sixty acres each, except where such person, firm, or corporation has such tracts under existing valid lease. [— *Stat. L.* —.]

For Act of Feb. 19, 1912, ch. 40, see 1914 Supp. Fed. Stat. Ann. 159.

SEC. 5. [Effect of Act on lands condemned for public purposes.] That the surface of any segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in the State of Oklahoma, which may have been, or may be, condemned under the laws of the State of Oklahoma for State penal institutions, or for county or municipal purposes, as authorized by the Indian appropriation Act approved March third, nineteen hundred and nine, shall be construed to include the entire estate, save the coal and asphalt reserved and existing valid leases thereon: *Provided*, That the State of Oklahoma shall have the preferential right of purchase, at the appraised value thereof, upon the same terms as apply to other coal and asphalt deposit sales under this Act, all coal and asphalt deposits under-

lying the surface heretofore purchased by the said State of Oklahoma, for the grounds of the State penitentiary: *Provided*, That said coal deposit under said land shall not be mined by convict labor for the purpose of sale to any private agencies, individual person, or corporation, or to be sold for private or commercial purposes. [— *Stat. L.* —.]

SEC. 6. [Enforcement of provisions of Act — rules, terms, and conditions — office — establishment.] That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules, regulations, terms, and conditions, not inconsistent with this Act, as he may deem necessary to carry out its provisions and shall establish an office for such purpose at McAlester, Pittsburg County, Oklahoma. [— *Stat. L.* —.]

SEC. 7. [Patents — issuance.] That when the full purchase price for any property sold hereunder is paid, the chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser an appropriate patent, conveying to the purchaser the property so sold: *Provided*, That the purchaser of any coal or asphalt deposits shall have the right at any time before final payment is due to pay the full purchase price on said coal and asphalt deposits, with accrued interest, and shall thereupon be entitled to a patent therefor as herein provided. [— *Stat. L.* —.]

SEC. 8. [Expenses of sale — payment — proceeds of sale — disposition.] That there is hereby appropriated, out of any Choctaw and Chickasaw funds in the Treasury not otherwise appropriated, the sum of \$50,000 to pay the expenses of appraisement, advertisement, and sale herein provided for, and the proceeds derived from the sales hereunder shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws. [— *Stat. L.* —.]

An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

[*Act of May 25, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Intoxicating liquors — possession as offense.] * * * That on and after September first, nineteen hundred and eighteen, possession by a person of intoxicating liquors in the Indian country where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of the Acts of July twenty-third, eighteen hundred and ninety-two (Twenty-seventh Statutes at Large, page two hundred and sixty), and January thirtieth, eighteen

hundred and ninety-seven (Twenty-ninth Statutes at Large, page five hundred and six). [— *Stat. L.* —.]

The Act of July 23, 1892, ch. 234, amended R. S. sec. 2139, see 3 Fed. Stat. Ann. 382; 3 Fed. Stat. Ann. (2d ed.) 913.

For the Act of Jan. 13, 1897, ch. 109, see 3 Fed. Stat. Ann. 384; 3 Fed. Stat. Ann. (2d ed.) 919.

See also the Act of May 18, 1916, ch. 125, sec. 1, *supra*, p. 251. And the Act of March 2, 1917, ch. 146, *supra*, p. 260.

[Expenditures for education.] * * * That hereafter no appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided. [— *Stat. L.* —.]

[Employees in Indian Service — heat and light.] * * * That the Secretary of the Interior is authorized to allow employees in the Indian Service who are furnished quarters necessary heat and light for such quarters without charge, such heat and light to be paid for out of the fund chargeable with the cost of heating and lighting other buildings at the same place: *And provided further*, That the amount so expended for agency purposes shall not be included in the maximum amounts for compensation of employees prescribed by section one, Act of August twenty-fourth, nineteen hundred and twelve. [— *Stat. L.* —.]

For the Act of Aug. 24, 1912, ch. 388, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 170. This Act amended the Act of June 7, 1897, ch. 3, § 1, given in 3 Fed. Stat. Ann. (2d ed.) 763.

Provisions identical with those of this paragraph appeared in the Act of May 18, 1916, ch. 125, § 1, 39 Stat. L. 124.

[Expenditures for pupils in Indian schools — per capita.] That hereafter, except for pay of superintendents and for transportation of goods and supplies and transportation of pupils, not more than \$200 shall be expended from appropriations made in this Act, or any other Act, for the annual support and education of any one pupil in any Indian school, unless the attendance in any school shall be less than one hundred pupils, in which case the Secretary of the Interior may authorize a per capita expenditure of not to exceed \$225: *Provided*, That the total amount appropriated for the support of such school shall not be exceeded: *Provided further*, That the number of pupils in any school entitled to the per capita allowance hereby provided for shall be determined by taking the average attendance for the entire fiscal year and not any fractional part thereof: *Provided further*, That the foregoing shall also apply to expenditures for the fiscal year ending June thirtieth, nineteen hundred and eighteen. [— *Stat. L.* —.]

[Salaries of farmers and expert farmers.] That hereafter no money shall be expended for the employment of any farmer or expert farmer at a salary of or in excess of \$50 per month, unless he shall first have procured and filed with the Commissioner of Indian Affairs a certificate of competency showing that he is a farmer of actual experience and qualified to instruct others in the art of practical agriculture, such certificate to be

certified and issued to him by the president or dean of the State agricultural college of the State in which his services are to be rendered, or by the president or dean of the State agricultural college of an adjoining State: *Provided*, That this provision shall not apply to persons employed in the Indian Service as farmer or expert farmer prior to January first, nineteen hundred and seventeen: *And provided further*, That this shall not apply to Indians employed or to be employed as assistant farmer. [— *Stat. L.* —.]

SEC. 2. [Creation of new reservations, etc.] * * * That hereafter no Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress.

SEC. 18. [Claims against Cherokee Nation — limitation of time for filing.] * * * That all claims against the Cherokee Nation, including claims to unpaid per capita and equalization money, which may now be paid under existing law out of the funds of the Cherokee Nation in the Treasury of the United States or otherwise in the hands of the Government, shall be filed, not later than one year from the date of the approval of this Act, with the superintendent for the Five Civilized Tribes or such other person as the Secretary of the Interior may designate, and under such rules and regulations as said Secretary of the Interior may prescribe to govern the filing, determining and settlement of said claims, and the claims so submitted and filed shall be considered and adjudicated under said rules and regulations not later than six months after the expiration of the time above limited for the filing of the claims, and shall, if approved by the Secretary of the Interior, be paid out of the tribal funds of the Cherokee Nation. Upon the expiration of the time limited in this Act claims against the Cherokee Nation shall be forever barred, and all of said tribal funds then remaining to the credit of the Cherokee Nation shall be expended under the direction of the Secretary of the Interior for building and furnishing an additional dormitory for the Cherokee Orphan Training School, near Tahlequah, Oklahoma.

SEC. 28. [Segregation of tribal funds — deposit of funds incapable of segregation — interest — investment — exceptions.] That the Secretary of the Interior be, and he is hereby, authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and segregate the common, or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States, and which are susceptible of segregation, so as to credit an equal share to each and every recognized member of the tribe except those whose pro rata shares have already been withdrawn under existing law, and to deposit the funds so segregated in banks to be selected by him, in the State or States in which the tribe is located, subject to withdrawal for payment to the individual owners or expenditure for their benefit under the regulations governing the use of other individual Indian moneys. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the Treasury and deposit in banks in the State or States in which

the tribe is located to the credit of the respective tribes, such common, or community, trust funds as are not susceptible of segregation as aforesaid, and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks: *Provided*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for either tribal or individual funds so deposited, in lieu of surety bonds: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in United States Government bonds: *And provided further*, That any part of tribal funds required for support of schools or pay of tribal officers shall be excepted from segregation or deposit as herein authorized and the same shall be expended for the purposes aforesaid: *Provided, however*, That the funds of any tribe shall not be segregated until the final rolls of said tribe are complete: *And provided further*, That the foregoing shall not apply to the funds of the Five Civilized Tribes, or the Osage Tribe of Indians, in the State of Oklahoma, but the funds of such tribes and individual members thereof shall be deposited in the banks of Oklahoma or in the United States Treasury and may be secured by the deposit of United States bonds.

An Act To provide for a determination of heirship in cases of deceased members of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Tribes of Indians in Oklahoma, conferring jurisdiction upon district courts to partition lands belonging to full-blood heirs of allottees of the Five Civilized Tribes, and for other purposes.

[*Act of June 14, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Determination of heirship in cases of deceased members of Five Civilized Tribes — administration proceedings.] That a determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: *Provided*, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: *Provided further*, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but

this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: *Provided further*, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing. [— *Stat. L.* —.]

SEC. 2. [Lands of members of Five Civilized Tribes subject to Oklahoma partition laws — restrictions.] That the lands of full-blood members of any of the Five Civilized Tribes are hereby made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisalment, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character. [— *Stat. L.* —.]

INFANTS

See LABOR

INHERITANCE TAX

See INTERNAL REVENUE

INSANE PERSONS

See HOSPITALS AND ASYLUMS

INSURANCE

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

INTERIOR DEPARTMENT

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SEC. 3. [Clerks and employees — R. S. sec. 440 amended.] That so much of section four hundred and forty of the Revised Statutes as follows the words " In the Patent Office," and refers to said office only, be amended to read as follows:

" One chief clerk, who shall be qualified to act as a principal examiner.

" One librarian, who shall be qualified to act as an assistant examiner.

" Five law examiners.

" One examiner of classification.

" One examiner of interferences.

" One examiner of trade-marks and designs.

" One first assistant examiner of trade-marks and designs.

" Six assistant examiners of trade-marks and designs.

" Forty-three principal examiners.

" Eighty-six first assistant examiners.

" Eighty-six second assistant examiners.

" Eighty-six third assistant examiners.

" Eighty-six fourth assistant examiners; and such other examiners and assistant examiners in the various grades as the Congress shall from time to time provide for." [39 Stat. L. 9.]

This is from an Act of Feb. 15, 1916, ch. 22, entitled "An Act Amending sections four hundred and seventy-six, four hundred and seventy-seven, and four hundred and forty of the Revised Statutes of the United States."

For R. S. sec. 440, amended by this section, see 3 Fed. Stat. Ann. 536; 3 Fed. Stat. Ann. (2d ed.) 945.

For section 1 and 2 of this Act, amending R. S. secs. 476, 477, see PATENTS, *post*.

[Chief clerk — duties.] * * * chief clerk, * * * who shall be chief executive officer of the department and who may be designated by the Secretary to sign official papers and documents during the temporary absence of the Secretary and the Assistant Secretaries. [39 Stat. L. 1102.]

This is from the Legislative, Executive and Judicial Appropriation Act of March 3, 1917, ch. 163, following an appropriation for the salary of the Secretary of the Interior. An identical provision appeared in the like Act of May 10, 1916, ch. 117, § 1; 39 Stat. L. 98.

Joint Resolution Authorizing the assistant to the Secretary of the Interior to sign official papers and documents.

[Resolution of March 28, 1918, No. —, — Stat. L. —.]

[Official papers and documents — by whom signed.] That the assistant to the Secretary of the Interior be, and hereby is, authorized to sign such official papers and documents as the Secretary may direct. [— Stat. L. —.]

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CROSS-REFERENCES

See *CUSTOMS DUTIES; POSTAL SERVICE; UNFAIR COMPETITION; WEST INDIAN ISLANDS.*

I. OFFICERS OF INTERNAL REVENUE

[Officers of Internal Revenue — designation of posts of duties — Internal Revenue agents — pay.] * * * Hereafter the Commissioner of Internal Revenue shall determine and designate the posts of duty of all employees of the Internal Revenue Service engaged in field work or traveling on official business outside of the District of Columbia, and when ordered from their designated posts of duty all internal revenue agents appointed under Section thirty-one hundred and fifty-two, Revised Statutes, as amended, and cotton-futures attorneys, may be granted per diem in lieu of subsistence not exceeding \$4, and, when ordered from their designated posts of duty, income-tax agents and inspectors, special gaugers, and special employees may be granted a per diem in lieu of subsistence not exceeding \$3, the per diem in lieu of subsistence to be fixed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury. [39 Stat. L. 87.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 177.

For R. S. sec. 3152, mentioned in the text, see 3 Fed. Stat. Ann. 564; 3 Fed. Stat. Ann. (2d ed.) 984.

SEC. 16. [Disclosure by revenue officers of operations, etc., prohibited — penalty — R. S. sec. 3167 amended.] That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

“ Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.” [39 Stat. L. 773.]

This is a part of section 16 of an Act of Sept. 8, 1916, ch. 463, entitled “An Act To increase the revenue and for other purposes.”

For R. S. sec. 3167, amended by the text, see 3 Fed. Stat. Ann. 574; 3 Fed. Stat. Ann. (2d ed.) 990.

SEC. 413. [Agents and inspectors — leave of absence.] That all internal revenue agents and inspectors be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 793.]

This section is a part of Title IV of the Act of Sept. 8, 1916, ch. 463, of which Act the foregoing section 16 is also a part. See the notes to section 15 of this Act, *infra*, p. 374.

[SEC. 1.] [Deputy commissioners of internal revenue — duties.] * * *
The Commissioner of Internal Revenue is authorized to assign to deputy commissioners such duties as he may prescribe, and the Secretary of the Treasury may designate any one of them to act as Commissioner of Internal Revenue during the commissioner's absence. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

II. ASSESSMENTS AND COLLECTIONS

[SEC. 1.] [Internal Revenue collections — disposition.] * * * That collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature, made by authority of law (including sums offered in compromise under the provisions of section thirty-two hundred and twenty-nine, Revised Statutes, as well as all other money received for which they are accountable under their respective collection bonds required to be given under section thirty-one hundred and forty-three, Revised Statutes), and the same shall be covered into the Treasury as internal-revenue collections: *Provided*, That nothing herein contained shall be construed as affecting the provisions of subsection "D" of Section II, Act of October third, nineteen hundred and thirteen, in the matter of withholding the normal income tax at the source. [39 Stat. L. 86.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 177.

For R. S. sec. 3229, mentioned in the text, see 3 Fed. Stat. Ann. 604; 3 Fed. Stat. Ann. (2d ed.) 1038.

For R. S. sec. 3143, mentioned in the text, see 3 Fed. Stat. Ann. 558; 3 Fed. Stat. Ann. (2d ed.) 979.

For the Act of Oct. 3, 1913, ch. 16, § II, subdivision "D," mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 187; 4 Fed. Stat. Ann. (2d ed.) 241. Said last cited Act was repealed by the Act of Sept. 8, 1916, ch. 463, § 24, *infra*, p. 377.

SEC. 14. [Suits to recover taxes under second assessment — burden of proof as to fraud — exceptions — R. S. sec. 3225 amended.] * * *

(d) That section thirty-two hundred and twenty-five of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines." [39 Stat. L. 773.]

The foregoing part of section 14 and the following portion of section 16 are a part of an Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue, and for other purposes."

For R. S. sec. 3225, amended by this section, see 3 Fed. Stat. Ann. 601; 3 Fed. Stat. Ann. (2d ed.) 1033.

SEC. 16. [Canvass of districts for objects of taxation — annual returns of persons liable to tax — failure to make return — return by officer — penalty — R. S. secs. 3172, 3173, 3176 amended.] That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-

one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows: * * *

“ **Sec. 3172.** Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

“ **Sec. 3173.** It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, (2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income, and (3) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any

person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, insurance company when such construction is necessary to carry out its provisions.

" Sec. 3176. If any person, corporation, company, or association, fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be *prima facie* good and sufficient for all legal purposes.

" If the failure to file a return or list due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

" The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed by law or by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

" The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the

amount so added shall be collected in the same manner as the tax." [39 Stat. L. 773.]

See the notes to the preceding section 14 of this Act.

For R. S. secs. 3172, 3173 and 3176, amended by this section, see 3 Fed. Stat. Ann. 576, 577, 580; 3 Fed. Stat. Ann. (2d ed.) 1002, 1006.

Power to assess stamp taxes exists, since this sec. 3176 is not a limitation of the power granted in R. S. 3182,

title INTERNAL REVENUE, 3 Fed. Stat. 583, 3 Fed. Stat. Ann. (2d ed.). *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

III. SPECIAL TAXES

An Act To amend subsection eleven of section thirty-two hundred and forty-four, Revised Statutes.

[Act of Sept. 7, 1916, ch. 453, 39 Stat. L. 740.]

[Special taxes imposed on whom—peddlers of tobacco—R. S. sec. 3244, subsec. 11, amended.] That subsection eleven of section thirty-two hundred and forty-four, Revised Statutes, be amended by adding at the end of said subsection the following: *Provided*, That manufacturers of, jobbers and wholesale dealers in, manufactured tobacco, snuff, cigars, and cigarettes, and the agents or salesmen of such manufacturers, jobbers, and wholesale dealers, traveling from place to place, in the town or through the country, and selling and delivering or offering to sell and deliver such products only to dealers, shall not be construed to be peddlers. [39 Stat. L. 740.]

For R. S. sec. 3244, subsec. 11, amended by this Act, see 3 Fed. Stat. Ann. 621; 3 Fed. Stat. Ann. (2d ed.) 1052.

SEC. 407. Special Taxes. That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say:

[Corporations — joint-stock companies or associations — insurance companies.] Every corporation, joint-stock company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each \$1,000 of the fair value of its capital stock and in estimating the value of capital stock the surplus and undivided profits shall be included: *Provided*, That in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the fair average value of the capital stock for the preceding year: *Provided*, That for the purpose of this tax an exemption of \$99,000

shall be allowed from the capital stock as defined in this paragraph of each corporation, joint-stock company or association, or insurance company: *Provided further*, That a corporation, joint-stock company or association, or insurance company, actually paying the tax imposed by section three hundred and one of Title III of this Act shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company, or association or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

Every corporation, joint-stock company or association, or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States shall pay annually a special excise tax with respect to the carrying on or doing business in the United States by such corporation, joint-stock company, or association or insurance company, equivalent to 50 cents for each \$1,000 of the capital actually invested in the transaction of its business in the United States: *Provided*, That in the case of insurance companies such deposits or reserve funds as they are required by law or contract to maintain or hold in the United States for the protection of or payment to or apportionment among policyholders, shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the average amount of capital so invested during the preceding year: *Provided*, That for the purpose of this tax an exemption from the amount of capital so invested shall be allowed equal to such proportion of \$99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere: *Provided further*, That this exemption shall be allowed only if such corporation, joint-stock company or association, or insurance company makes return to the Commissioner of Internal Revenue, under regulations prescribed by him, with the approval of the Secretary of the Treasury, of the amount of capital invested in the transaction of business outside the United States: *And provided further*, That a corporation, joint-stock company or association, or insurance company actually paying the tax imposed by section three hundred and one of Title III of this act, shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

Second. [**Brokers.**] Brokers shall pay \$30. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for others, shall be regarded as a broker.

Third. [**Pawnbrokers.**] Pawnbrokers shall pay \$50. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or

any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

Fourth. **[Ship brokers.]** Ship brokers shall pay \$20. Every person, firm, or company whose business it is as a broker to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a ship broker under this section.

Fifth. **[Customhouse brokers.]** Customhouse brokers shall pay \$10. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other customhouse papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a customhouse broker.

Sixth. **[Proprietors of theaters, museums, and concert halls.]** Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay \$25; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay \$50; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay \$75; having a seating capacity of more than eight hundred, shall pay \$100. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: *Provided*, That in cities, towns, or villages of five thousand inhabitants or less the amount of such payment shall be one-half of that above stated: *Provided further*, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

Seventh. **[Proprietors of circuses.]** The proprietor or proprietors of circuses shall pay \$100. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this section are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

Eighth. **[Proprietors etc., of public exhibitions, etc.]** Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay \$10: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: *Provided further*, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or chari-

table associations: *Provided further*, That an aggregation of entertainments, known as a street fair, shall not pay a larger tax than \$100 in any State, Territory, or in the District of Columbia.

Ninth. [**Proprietors of bowling alleys and billiard rooms.**] Proprietors of bowling alleys and billiard rooms shall pay \$5 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley or a billiard room, respectively. [39 Stat. L. 789.]

The foregoing sec. 407 and the following sec. 408 are a part of Title IV of an Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." Various other sections of this Act, containing administrative provisions, etc., are given in subdivision XV of this title, *infra*, p. 374, and should be read in connection with these sections.

Sec. 301 of Title III of this Act, mentioned in the second and third paragraphs of this section, is given *infra*, p. 297.

SEC. 408. [**Special taxes on tobacco, cigar, and cigarette manufacturers.**] That on and after January first, nineteen hundred and seventeen, special taxes on tobacco, cigar, and cigarette manufacturers shall be, and hereby are, imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay \$3;

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay \$6;

Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay \$12;

Manufacturers of tobacco whose annual sales exceed two hundred thousand pounds shall each pay at the rate of 8 cents per thousand pounds, or fraction thereof;

Manufacturers of cigars whose annual sales do not exceed fifty thousand cigars shall each pay \$2;

Manufacturers of cigars whose annual sales exceed fifty thousand and do not exceed one hundred thousand cigars shall each pay \$3;

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay \$6;

Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay \$12;

Manufacturers of cigars whose annual sales exceed four hundred thousand cigars shall each pay at the rate of 5 cents per thousand cigars, or fraction thereof;

Manufacturers of cigarettes, including small cigars weighing not more than three pounds per thousand, shall each pay at the rate of 3 cents for every ten thousand cigarettes, or fraction thereof.

In arriving at the amount of special tax to be paid under this section, and in the levy and collection of such tax, each person, firm, or corporation engaged in the manufacture of more than one of the classes of articles specified in this section shall be considered and deemed a manufacturer of each class separately.

Every person who carries on any business or occupation for which special taxes are imposed by this title, without having paid the special tax therein

provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, in the discretion of the court. [39 Stat. L. 792.]

See the note to the preceding sec. 407 of this Act.

IV. BEVERAGES

An Act To amend existing laws relating to the use of alcohol, free of tax, by scientific institutions or colleges of learning.

[Act of July 8, 1916, ch. 236, 39 Stat. L. 354.]

[Alcohol withdrawn for scientific purposes — former act amended.] That an Act entitled “An Act to extend the provisions of section thirty-two hundred and ninety-seven of the Revised Statutes to other institutions of learning,” approved May third, eighteen hundred and seventy-eight, is hereby amended to read as follows:

“That the Secretary of the Treasury is authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States, for the withdrawal of alcohol from bond, free of tax to any scientific university or college of learning created and constituted as such by any State or Territory under its laws, though not incorporated or chartered, and to any hospital maintained by endowment or otherwise, and not conducted for profit, upon the same terms and subject to the same restrictions and penalties already provided by said section thirty-two hundred and ninety-seven: *Provided, however,* That alcohol so obtained by hospitals may be used in surgical operations and, except as a beverage, in the treatment of patients, under such regulations as the Secretary of the Treasury may prescribe: *And provided, further,* That the bond required by said section thirty-two hundred and ninety-seven may be executed by an officer of such hospital or institution or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided.” [39 Stat. L. 354.]

For R. S. sec. 3297, mentioned in this Act, see 3 Fed. Stat. Ann. 672; 4 Fed. Stat. Ann. (2d. ed.) 58.

For the Act of May 3, 1878, ch. 88, amended by this Act, see 3 Fed. Stat. Ann. 673; 4 Fed. Stat. Ann. (2d ed.) 93.

An Act To amend an Act entitled “An Act to amend an Act entitled ‘An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses when mixed with suitable denaturing materials,’ ” approved March second, nineteen hundred and seven.

[Act of June 22, 1916, ch. 163, 39 Stat. L. 233.]

[Denatured alcohol — transfer from distillery to bonded warehouse — allowances — former Act amended.] That the Act entitled “An Act to

amend an Act entitled 'An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses when mixed with suitable denaturing materials,' approved March second, nineteen hundred and seven, be, and the same is hereby, amended by adding to section three thereof the following:

" *Provided*, That where alcohol is withdrawn from a distillery warehouse for shipment to a central denaturing bonded warehouse under the provisions of this Act it shall be lawful under such rules, regulations, and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any accident, and without any fraud or negligence of the distiller, owner, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a central denaturing bonded warehouse. [39 Stat. L. 233.]

For the Act of March 2, 1907, ch. 2571, § 3, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 252; 4 Fed. Stat. Ann. (2d ed.) 120.

SEC. 400. [Tax on fermented liquors — R. S. sec. 3339 amended.] That there shall be levied, collected, and paid a tax of \$1.50 on all beer, lager beer, ale, porter, and other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised States is hereby amended accordingly. [39 Stat. L. 783.]

The foregoing sec. 400 and the following secs. 401-406 are a part of "Title IV — Miscellaneous Taxes" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act to increase the revenue and for other purposes." General administrative provisions of this Act which affect these sections and should be read in connection therewith are given under subdivision XV, *infra*, p. 374.

For R. S. sec. 3339, amended by this section, see 3 Fed. Stat. Ann. 713; 4 Fed. Stat. Ann. (2d ed.) 126.

SEC. 401. ["Wine" within meaning of Act.] That natural wine within the meaning of this Act shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging: *Provided, however*, That the product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a gauger or storekeeper-gauger in the capacity of gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than ninety-five per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product

more than thirty-five per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than thirteen per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this Act, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name its own particular type or variety: *And provided further*, That wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this Act, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this Act. [39 Stat. L. 783.]

See the note to the preceding sec. 400 of this Act.

SEC. 402. (a) [Tax on wines — alcoholic strengths — abatement of former taxes.] That upon all still wines, including vermouth, and upon all artificial or imitation wines or compound sold as wine hereafter produced in or imported into the United States, and upon all like wines which on the date this section takes effect shall be in the possession or under the control of the producer, holder, dealer, or compounder there shall be levied, collected, and paid taxes at rates as follows:

On wines containing not more than fourteen per centum of absolute alcohol, 4 cents per wine gallon, the per centum of alcohol taxable under this section to be reckoned by volume and not by weight.

On wines containing more than fourteen per centum and not exceeding twenty-one per centum of absolute alcohol, 10 cents per wine gallon.

On wines containing more than twenty-one per centum and not exceeding twenty-four per centum of absolute alcohol, 25 cents per wine gallon.

All such wines containing more than twenty-four per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly: *Provided*, That on all unsold still wines in the actual possession of the producer at the time this title takes effect, upon which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been assessed, the tax so assessed shall be abated, or, if paid, refunded under such regulations as the Commissioner of Internal Revenue, which the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 783.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For the Act of Oct 22, 1914, ch. 331, mentioned in this paragraph, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 122.

For the Res. of Dec. 17, 1915, No. 2, mentioned in this paragraph, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

[SEC. 402 continued] (b) [Payment of tax — stamps — exceptions.] That the taxes imposed by this section shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of

storage for consumption or sale, and every person hereafter producing, or having in his possession or under his control when this section takes effect, any wines subject to the tax imposed in this section shall file such notice, describing the premises on which such wines are produced, or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask or vessel containing such wine such marks, labels, or stamps as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; and the premises described in such notice shall, for the purpose of this section, be regarded as bonded premises. But the provisions of this subdivision of this section, except as to payment of tax and the affixing of the required stamps or labels, shall not apply to wines held by retail dealers, as defined in section thirty-two hundred and forty-four of the Revised Statutes of the United States; nor, subject to regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall the tax imposed by this section apply to wines produced for the family use of the producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year. The Commissioner of Internal Revenue is hereby authorized to have prepared and issue such stamps denoting payment of the tax imposed by this section as he may deem requisite and necessary; and until such stamps are provided the taxes imposed by this section shall be assessed and collected as other taxes are assessed and collected, and all provisions of law relating to assessment and collection of taxes, so far as applicable, are hereby extended to the taxes imposed by this section. [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3244, mentioned in this paragraph, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

[SEC. 402 continued] (c) [Withdrawal of brandy or spirits for fortification — tax.] That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, any producer of wines defined under the provisions of this section or section four hundred and one of this Act, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: *Provided*, That there shall be levied and assessed against the producer of such wines a tax of 10 cents per proof gallon of grape brandy or wine spirits so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within six months from the date of notice thereof: *Provided further*, That nothing herein contained shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this section. [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

An additional tax was imposed on brandy or spirits withdrawn under this section by the Act of Oct. 3, 1917, ch. —, § 311, *infra*, p. 301.

[SEC. 402 (c) continued] [Use of wine spirits to fortify pure sweet wines — wine spirits and pure sweet wine defined — withdrawal of wine spirits for fortifying sweet wines — regulations, etc.— former Act amended.] That sections forty-two, forty-three, and forty-five of the Act of October first, eighteen hundred and ninety, as amended by section sixty-eight of the Act of August twenty-seventh, eighteen hundred and ninety-four, are further amended to read as follows:

“ SEC. 42. That any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue, in determining the liability of any distiller of wine spirits to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this Act.

“ SEC. 43. That the wine spirits mentioned in section forty-two herein mentioned is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: *Provided*, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than ninety-five per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: *Provided*, *however*, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of eleven per centum of the weight of the wine to be fortified: *And provided further*, That the addition of water herein authorized shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe: *Provided*, *however*, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same,

after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume.

"SEC. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines." [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For the Act of Oct. 1, 1890, ch. 1244, §§ 42, 43 and 45, amended by this paragraph, see 3 Fed. Stat. Ann. 708, 709, 710; 4 Fed. Stat. Ann. (2d ed.) 99, 101. These sections had previously been amended by the Act of Oct. 22, 1914, ch. 331, § 2, but said Act was repealed by sec. 410 of this Act, *infra*, p. 380.

[SEC. 402 continued] (d) [Withdrawal of domestic wines for storage — limitation — tax when used as material by distiller.] That under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, domestic wines subject to the tax imposed by this section may be removed from the winery where produced, free of tax, for storage on other bonded premises or from said

premises to other bonded premises: *Provided*, That not more than one such additional removal shall be allowed, or for exportation from the United States or for use as distilling material at any regularly registered distillery: *Provided, however*, That the distiller using any such wine as material shall, subject to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification. [39 Stat. L. 786.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3309, mentioned in this paragraph, see 3 Fed. Stat. Ann. 678; 4 Fed. Stat. Ann. (2d ed.) 64.

[SEC. 402 continued] (e) [Tax on sparkling wines — champagne — artificially carbonated wine — liqueurs, cordials, etc.—tax paid under prior emergency act — stamps — collection.] That upon all domestic and imported sparkling wines, liqueurs, cordials, and similar compounds remaining in the hands of dealers when this section takes effect, or thereafter removed from the place of manufacture or storage for sale or consumption, there shall be levied and paid, by stamp, taxes as follows:

On each bottle or other container of champagne or sparkling wine, 3 cents on each one-half pint or fraction thereof.

On each bottle or other container of artificially carbonated wine, 1½ cents on each one-half pint or fraction thereof.

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, fortified with grape brandy under the provisions of paragraph (c) of this section, 1½ cents on each one-half pint or fraction thereof.

The taxes imposed by this section shall not apply to wines, liqueurs, or cordials on which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been paid by stamp.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to have prepared suitable revenue stamps denoting the payment of the taxes imposed by this section; and all provisions of law relating to internal-revenue stamps, so far as applicable, are hereby extended to the taxes imposed by this section: *Provided*, That the collection of the tax herein prescribed on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, by assessment instead of by stamps. [39 Stat. L. 786.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (f) [Evading tax — illegal recovery, rectifying, etc.— penalty — rectifying and blending permitted.] That any person who shall evade or attempt to evade the tax imposed by this section, or any requirement of this section or regulation issued pursuant thereof, or who shall, otherwise than provided in this section, recover or attempt to recover any spirits from domestic or imported wine, or who shall rectify, mix, or compound with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds taxable under the provisions of this section, shall, on conviction, be punished for each such offense by a fine of not exceeding \$5,000, or imprisonment for not more than five years, or both, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provision of this subdivision of this section and the provision of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of this section with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: *Provided*, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section fifty-three of this Act. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3244, mentioned in the text, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

The text paragraph mentions "section fifty-three of this Act" but the Act contains no section of that number.

[SEC. 402 continued] (g) [Special meters, locks, seals, etc., for fruit distilleries — assignment of gaugers — pay, etc.] That the Commissioner of Internal Revenue, by regulations to be approved by the Secretary of the Treasury, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient; and the said Commissioner is hereby authorized to assign to any such distillery and to each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers in the capacity of gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying of wines subject to tax imposed by this section; and the compensation of such officers shall not exceed \$5 per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but not to exceed \$2.50 per diem for said board bills. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (h) [Allowance for unavoidable loss.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment

may be just and proper, and to prepare all necessary regulations for carrying into effect the provisions of this section. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (i) [Surveys — basis of capacity — amount of water — R. S. sec. 3264 amended.] That the second paragraph of section thirty-two hundred and sixty-four, Revised Statutes of the United States of America, as amended by section five of the Act of March first, eighteen hundred and seventy-nine, and as further amended by the Act of Congress approved June twenty-second, nineteen hundred and ten, be amended so as to read as follows:

“In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall hereafter be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.” [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3264, amended by this paragraph, see 3 Fed. Stat. Ann. 642; 4 Fed. Stat. Ann. (2d. ed.) 31.

SEC. 403. [Distilled spirits — exportation.] That under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any distillery warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of existing law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this Act. [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

SEC. 404. [Distillers of fruit brandy — exemptions — R. S. sec. 3255 amended.] That section thirty-two hundred and fifty-five of the Revised Statutes as amended by Act of June third, eighteen hundred and ninety-

six, and as further amended by Act of March second, nineteen hundred and eleven, be further amended so as to read as follows:

“**Sec. 3255.** The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided*, That where, in manufacture of wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation of brandy, as such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *And provided further*, That the distillers mentioned in this section may add to not less than five hundred gallons (or ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, ninety-five per centum pure, such solution to have a saccharine strength of not to exceed ten per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material.” [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3255, amended by this section, see 3 Fed. Stat. Ann. 634; 4 Fed. Stat. Ann. (2d ed.) 22.

SEC. 405. [Gin — exportation — tax.] That distilled spirits known commercially as gin of not less than eighty per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

SEC. 406. [Withdrawal of liquor by brewer for bottling — payment of tax by cancelled stamps — R. S. sec. 3354 amended.] That section thirty-three hundred and fifty-four of the Revised Statutes of the United States as amended by the Act approved June eighteenth, eighteen hundred and ninety, be, and is hereby, amended to read as follows:

“**Sec. 3354.** Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of \$500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however*, That this section shall not be construed to prevent the withdrawal and transfer of unfer-

mented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, clocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue at the expense of the United States: *Provided further*, That the tax imposed in section thirty-three hundred and thirty-nine of the Revised Statutes of the United States shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house, who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same." [39 Stat. L. 789.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3354, amended by this section, see 3 Fed. Stat. Ann. 721; 4 Fed. Stat. Ann. (2d ed.) 133.

For R. S. sec. 3339, mentioned in this section, see 3 Fed. Stat. Ann. 713; 4 Fed. Stat. Ann. (2d ed.) 126.

SEC. 300. [Distilled spirits—amount of tax—perfumes containing distilled spirits.] That on and after the passage of this Act there shall be levied and collected on all distilled spirits in bond at that time or that have been or that may be then or thereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section three hundred and three, in addition to the tax now imposed by law, a tax of \$1.10 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

That in addition to the tax under existing law there shall be levied and

collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of \$1.10 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal-revenue collections, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [— *Stat. L.* —.]

The foregoing sec. 300 and the following secs. 301-315 constitute "Title III — War Tax on Beverages" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes."

General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 301. [Importation of distilled spirits — restriction on.] That no distilled spirits produced after the passage of this Act shall be imported into the United States from any foreign country, or from the West Indian Islands recently acquired from Denmark (unless produced from products the growth of such islands, and not then into any State or Territory or District of the United States in which the manufacture or sale of intoxicating liquor is prohibited), or from Porto Rico, or the Philippine Islands. Under such rules, regulations, and bonds as the Secretary of the Treasury may prescribe, the provisions of this section shall not apply to distilled spirits imported for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage. [— *Stat. L.* —.]

See the note to the preceding sec. 300 of this Act.

SEC. 302. [Withdrawal of spirits from distilleries.] That at registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse. Such spirits may be also transferred from the receiving cisterns at such distilleries, by means of pipe lines, direct to storage tanks in the bonded warehouse and may be warehoused in such storage tanks. Such spirits may be also transferred in tanks or tank cars to general bonded warehouses for storage therein, either in storage tanks in such warehouses or in the tanks in which they were transferred. Such spirits may also be transferred after tax payment from receiving cisterns or warehouse storage tanks to tanks or tank cars and may be transported in such tanks or tank cars to the premises of rectifiers of spirits. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing and transporting of such spirits; the records to be kept and returns to be made; the size and kind of packages and tanks to be used; the marking, branding, numbering and stamping of such packages and tanks; the kinds of stamps, if any, to be used; and the time and manner of paying the tax; the kind of bond and the penal sum of same. The tax prescribed by law must be paid before such spirits are removed from the distillery premises, or from general

bonded warehouse in the case of spirits transferred thereto, except as otherwise provided by law.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may hereafter be drawn from receiving cisterns and deposited in distillery warehouses without having affixed to the packages containing the same distillery warehouse stamps, and such packages, when so deposited in warehouse, may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the manufacture, warehousing, withdrawal, and shipment, under the provisions of existing law, of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section thirty-two hundred and eighty-three, Revised Statutes of the United States.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, manufacturers of ethyl alcohol for other than beverage purposes may be granted permission under the provisions of section thirty-two hundred and eighty-five, Revised Statutes of the United States, to fill fermenting tub in a sweet-mash distillery not oftener than once in forty-eight hours. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For R. S. secs. 3283, 3285, mentioned in this section, see 3 Fed. Stat. Ann. 655, 656; 3 Fed. Stat. Ann. (2d ed.) 152, 154.

SEC. 303. [Distilled spirits held by retailer — tax — amount.] That upon all distilled spirits produced in or imported into the United States upon which the tax now imposed by law has been paid, and which, on the day this Act is passed, are held by a retailer in a quantity in excess of fifty gallons in the aggregate, or by any other person, corporation, partnership, or association in any quantity, and which are intended for sale, there shall be levied, assessed, collected, and paid a tax of \$1.10 (or, if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon: *Provided*, That the tax on such distilled spirits in the custody of a court of bankruptcy in insolvency proceedings on June first, nineteen hundred and seventeen, shall be paid by the person to whom the court delivers such distilled spirits at the time of such delivery, to the extent that the amount thus delivered exceeds the fifty gallons hereinbefore provided. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 304. [Additional tax on spirits hereafter rectified — blending.] That in addition to the tax now imposed or imposed by this Act on distilled spirits there shall be levied, assessed, collected, and paid a tax of 15 cents

on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section thirty-two hundred and forty-four, Revised Statutes, as amended, and on all such articles in the possession of the rectifier on the day this Act is passed: *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

When the process of rectification is completed and the tax prescribed by this section has been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the tax has theretofore been paid.

The tax imposed by this section shall not attach to cordials or liquors on which a tax is imposed and paid under the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: *Provided*, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

All distilled spirits taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whiskey and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which the same may have been produced.

The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Any person violating any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years. He shall, in addition, be liable to double the tax evaded together with the tax, to be collected by assessment or on any bond given. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For R. S. sec. 3244, mentioned in this section, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

The provisions of the Act of Sept. 8, 1916, ch. 463, to which reference is made in this section, are given within this subdivision, *supra*, p. 287.

SEC. 305. [Stamps — collectors when not to furnish — discontinuance.] That hereafter collectors of internal revenue shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby: Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine and export fermented liquor stamps. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 306. [Distilleries, breweries and rectifying houses — installation of meters, etc.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person, corporation, partnership, or association on whose premises the installation is required. Any such person, corporation, partnership, or association refusing or neglecting to install such apparatus when so required by the commissioner shall not be permitted to conduct business on such premises. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 307. [Beer, ale, porter, etc.— amount of tax.] That on and after the passage of this Act there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half per centum or more of alcohol, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in addition to the tax now imposed by law, a tax of \$1.50 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 308. [Fermented liquors — removal from brewery to distillery — tax.] That from and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act of October third, nineteen hundred and thirteen, to be used as distilling material, and the residue from such distillation, containing less than one-half of one per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the

distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner of Internal Revenue shall deem proper, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For the Act of Oct. 3, 1913, ch. 16, § IV, N, subsec. 2, to which reference is made in the text, see 1914 Supp. Fed. Stat. Ann. 200; 4 Fed. Stat. Ann. (2d ed.) 121.

SEC. 309. [Still wines, etc.— amount of tax.] That upon all still wines, including vermouth, and upon all champagne and other sparkling wines, liqueurs, cordials, artificial or imitation wines or compounds sold as wine, produced in or imported into the United States, and hereafter removed from the custom-house, place of manufacture, or from bonded premises for sale or consumption, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax equal to such tax, to be levied, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 310. [Still wines, etc.— additional tax.] That upon all articles specified in section three hundred and nine upon which the tax now imposed by law has been paid and which are on the day this Act is passed held in excess of twenty-five gallons in the aggregate of such articles and intended for sale, there shall be levied, collected, and paid a tax equal to the tax imposed by such section. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 311. [Grape brandy or wine spirits — amount of tax.] That upon all grape brandy or wine spirits withdrawn by a producer of wines from any fruit distillery or special bonded warehouse under subdivision (c) of section four hundred and two of the Act entitled “An Act to increase the revenue, and for other purposes,” approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid in addition to the tax therein imposed, a tax equal to double such tax, to be assessed, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

The Act of Sept. 8, 1916, ch. 463, § 402, subdivision (c), mentioned in the text, is given *supra*, p. 289.

SEC. 312. [Sweet wines — additional tax.] That upon all sweet wines held for sale by the producer thereof upon the day this Act is passed there shall be levied, assessed, collected, and paid an additional tax equivalent to 10 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine, and an additional tax of 20 cents per proof gallon shall be levied, assessed, collected, and paid upon all grape brandy or wine spirits withdrawn by a producer of sweet wines for the purpose

of fortifying such wines and not so used prior to the passage of this Act. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 313. [Soft drinks — grape juice — mineral water — amount of tax.] That there shall be levied, assessed, collected, and paid —

(a) Upon all prepared sirups or extracts (intended for use in the manufacture or production of beverages, commonly known as soft drinks, by soda fountains, bottling establishments, and other similar places) sold by the manufacturer, producer, or importer thereof, if so sold for not more than \$1.30 per gallon, a tax of 5 cents per gallon; if so sold for more than \$1.30 and not more than \$2 per gallon, a tax of 8 cents per gallon; if so sold for more than \$2 and not more than \$3 per gallon, a tax of 10 cents per gallon; if so sold for more than \$3 and not more than \$4 per gallon, a tax of 15 cents per gallon; and if so sold for more than \$4 per gallon, a tax of 20 cents per gallon; and

(b) Upon all unfermented grape juice, soft drinks, or artificial mineral waters (not carbonated), and fermented liquors containing less than one-half per centum of alcohol, sold by the manufacturer, producer, or importer thereof, in bottles or other closed containers, and upon all ginger ale, root beer, sarsaparilla, pop, and other carbonated waters or beverages, manufactured and sold by the manufacturer, producer, or importer of the carbonic acid gas used in carbonating the same, a tax of 1 cent per gallon; and

(c) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 1 cent per gallon. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 314. [Monthly returns by manufacturer, etc., of soft drinks.] That each such manufacturer, producer, bottler, or importer shall make monthly returns under oath to the collector of internal revenue for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 315. [Carbonic acid gas — amount of tax.] That upon all carbonic acid gas in drums or other containers (intended for use in the manufacture or production of carbonated water or other drinks) sold by the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax of 5 cents per pound. Such tax shall be paid by the purchaser to the vendor thereof and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section five hundred and three. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

Joint Resolution Authorizing and directing the Secretary of the Treasury to permit the entry of distilled spirits into bonded warehouses under bond, conditioned for the export of such distilled spirits to some foreign country within one year from the date of entry into the United States.

[*Res. of Oct. 6, 1917, No. —, — Stat. L. —.*]

[Distilled spirits — shipments from foreign countries — entry into bonded warehouses.] That the Secretary of the Treasury be, and he is hereby, authorized and directed to permit the entry of distilled spirits shipped from any foreign country to the United States prior to September first, nineteen hundred and seventeen, into bonded warehouses in the United States, under bond to be given by the importer of such distilled spirits, conditioned for the export of such goods to some foreign country within the period of one year from and after the entry thereof into the United States. [*— Stat. L. —.*]

V. CIGARS, TOBACCO AND MANUFACTURERS THEREOF

SEC. 400. [Cigars and cigarettes — amount of tax — “retail” defined.] That upon cigars and cigarettes, which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected, in addition to the taxes now imposed by existing law, the following taxes, to be paid by the manufacturer or importer thereof: (a) on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 25 cents per thousand; (b) on cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at 4 cents or more each, and not more than 7 cents each, \$1 per thousand; (c) if manufactured or imported to retail at more than 7 cents each and not more than 15 cents each, \$3 per thousand; (d) if manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$5 per thousand; (e) if manufactured or imported to retail at more than 20 cents each, \$7 per thousand: *Provided*, That the word “retail” as used in this section shall mean the ordinary retail price of a single cigar, and that the Commissioner of Internal Revenue may, by regulation, require the manufacturer or importer to affix to each box or container a conspicuous label indicating by letter the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on said box or container; (f) on cigarettes made of tobacco, or any substitute therefor, made in or imported into the United States, and weighing not more than three pounds per thousand, 80 cents per thousand; weighing more than three pounds per thousand, \$1.20 per thousand.

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or use in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty,

eighty or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or use under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom. [*— Stat. L. —.*]

The foregoing sec. 400 and the following secs. 401–404 constitute Title IV—“War Tax on Cigars, Tobacco, and Manufacturers Thereof” of the Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses, and for other purposes.” General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 401. [Tobacco and snuff — amount of tax — how put up.] That upon all tobacco and snuff hereafter manufactured and sold, or removed for consumption or use, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax of 5 cents per pound, to be levied, collected, and paid under the provisions of existing law.

In addition to the packages provided for under existing law, manufactured tobacco and snuff may be put up and prepared by the manufacturer for sale or consumption, in packages of the following description: Packages containing one-eighth, three-eighths, five-eighths, seven-eighths, one and one-eighth, one and three-eighths, one and five-eighths, one and seven-eighths, and five ounces. [*— Stat. L. —.*]

See the notes to the preceding sec. 400 of this Act.

SEC. 402. [Certain sections of title when effective.] That sections four hundred, four hundred and one, and four hundred and four, shall take effect thirty days after the passage of this Act: *Provided*, That after the passage of this Act and before the expiration of the aforesaid thirty days, cigarettes and manufactured tobacco and snuff may be put up in the packages now provided for by law or in the packages provided for in sections four hundred and four hundred and one. [*— Stat. L. —.*]

See the notes to sec. 400 of this Act, *supra*, p. 303.

SEC. 403. [Manufactured tobacco, etc., removed from factory or custom-house prior to Act.] That there shall also be levied and collected, upon all manufactured tobacco and snuff in excess of one hundred pounds or upon cigars or cigarettes in excess of one thousand, which were manufactured or imported, and removed from factory or custom-house prior to the passage of this Act, bearing tax-paid stamps affixed to such articles for the payment of the taxes thereon, and which are, on the day after this Act is passed, held and intended for sale by any person, corporation, partnership, or association, and upon all manufactured tobacco, snuff, cigars or cigarettes, removed from factory or customs house after the passage of this Act but prior to the time when the tax imposed by section four hundred or section four hundred and one upon such articles takes effect, an additional tax

equal to one-half the tax imposed by such sections upon such articles. [— *Stat. L.* —.]

See the notes to sec. 400 of this Act, *supra*, p. 303.

SEC. 404. [Cigarette paper — amount of tax.] That there shall be levied, assessed, and collected upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and intended for use by the smoker in making cigarettes the following taxes: On each package, book, or set, containing more than twenty-five but not more than fifty papers, one-half of 1 cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, 1 cent for each one hundred papers or fractional part thereof; and upon tubes, 2 cents for each one hundred tubes or fractional part thereof. [— *Stat. L.* —.]

See the notes to sec. 400 of this Act, *supra*, p. 303.

VI. ESTATE TAX

SEC. 200. [Definitions — “person” — “United States” — “executor” — “collector.”] That when used in this title —

The term “person” includes partnerships, corporations, and associations;

The term “United States” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland. [39 *Stat. L.* 777.]

The foregoing sec. 200 and the following secs. 201–212 constitute “Title II — Estate Tax” of the Act of Sept. 8, 1916, ch. 463, entitled “An Act To increase the revenue and for other purposes.” General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 201 [Amount of tax.] That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One and one-half per centum of the amount of such net estate not in excess of \$50,000;

Three per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Four and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Six per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Seven and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Nine per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Ten and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Twelve per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Thirteen and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Fifteen per centum of the amount by which such net estate exceeds \$5,000,000. [39 Stat. L. 777, as amended by 39 Stat. L. 1002.]

See the notes to the preceding sec. 200 of this Act.

This section was amended to read as here given by the Act of March 3, 1917, ch. 159, title III., sec. 300. As originally enacted it was as follows:

"Sec. 201. That a tax (hereinafter in this title referred to as, the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not [not] exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000."

A tax in addition to that imposed by this section, was imposed on the transfer of the net estates of decedents by the Act of Oct. 3, 1917, ch. —, sec. 900, *infra*, p. 311.

See the Act of March 3, 1917, ch. 159, sec. 301, *infra*, p. 310.

SEC. 202. [Value of gross estate — determination.] That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any

time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death. [39 Stat. L. 777.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

The transfer tax under the state law estimated tax under this War Revenue Act of 1916. Matter of Bierstadt, (1917) 178 App. Div. 836, 166 N. Y. S. 168.

SEC. 203. [Value of net estate — determination.] That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 204. [Payment of tax — discount — interest.] That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 205. [Duty of executors — notice — return — assessment of tax.] That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 206. [Return by collector.] That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon. [39 Stat. L. 779.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 207. [Payment of tax — overpayment — refund — underpayment — interest.] That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. [39 Stat. L. 779.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 208. [Subjecting property of decedent to sale to satisfy tax.] That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. [39 Stat. L. 779.]

* See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 209. [Tax as lien on decedent's estate — transfers in anticipation of death — innocent purchasers for value.] That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth. [39 Stat. L. 780.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 210. [Violation of act — penalty.] That whoever knowingly makes any, false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States. [39 Stat. L. 780.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 211. [Existing laws made applicable to title.] That all administrative special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions. [39 Stat. L. 780.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 212. [Regulations — books and forms.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and prescribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title. [39 Stat. L. 780.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 301. [Estate tax — when effective.] That the tax on the transfer of the net estate of decedents dying between September eighth, nineteen hundred and sixteen, and the passage of this Act shall be computed at the

rates originally prescribed in the Act approved September eighth, nineteen hundred and sixteen. [39 Stat. L. 1002.]

This section is part of an Act of March 3, 1917, ch. 159, entitled "An Act To provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications and for other purposes." This Act comprised four titles as follows: "Title I.—Special Preparedness Fund," which was repealed by the Act of Oct. 3, 1917, ch. —, § 1301, *infra*, p. 386; "Title II.—Excess Profits Tax," consisting of §§ 200–207, repealed by the Act of Oct. 3, 1917, ch. —, title II, § 214, *supra*, p. 350, and set out in the notes to § 200 of said Act, *supra*, p. 341; "Title III.—Estate Tax," consisting of section 300, which amended the Act of Sept. 8, 1916, ch. 463, title II, § 201, *supra*, p. 305, and the text § 301, which refers to the prior amending section; "Title IV.—Miscellaneous," consisting of §§ 400, 401, given under the title PUBLIC DEBT, and § 402, which amended the Act of Sept. 8, 1916, ch. 463, title I, part 3, by adding a new section 26 thereto, *infra*, p. 377.

SEC. 900. [Amount of tax.] That in addition to the tax imposed by section two hundred and one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended —

(a) A tax equal to the following percentages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such Act of September eighth, nineteen hundred and sixteen):

One-half of one per centum of the amount of such net estate not in excess of \$50,000;

One per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

One and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Two per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Two and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Three per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Three and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Four per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Four and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

Five per centum of the amount by which such net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

Seven per centum of the amount by which such net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

Ten per centum of the amount by which such net estate exceeds \$10,000,000. [— Stat. L. —.]

The foregoing section 900 and the following section 901 constitute "Title IX.—War Estate Tax" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue

to defray war expenses, and for other purposes." General administrative provisions of this Act, which affect these sections and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

The former Act of Sept. 8, 1916, ch. 463, title II, § 201, mentioned in the text, is given *supra*, p. 305.

SEC. 901. [Exemptions.] That the tax imposed by this title shall not apply to the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war. For the purposes of this section the termination of the war shall be evidenced by the proclamation of the President. [— *Stat. L.* —.]

See the notes to the preceding § 900 of this Act.

VII. INCOMES

TITLE I.—INCOME TAX.

PART I.—ON INDIVIDUALS.

SEC. 1. [Individuals—amount of tax—nonresident aliens—dividends from corporations, etc.—normal tax provisions applicable—basis of tax.] (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

(b) In addition to the income tax imposed by subdivision (a) of this section (herein referred to as the normal tax) there shall be levied, assessed, collected, and paid upon the total net income of every individual, or, in the case of a nonresident alien, the total net income received from all sources within the United States, an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which such total net income exceeds \$20,000 and does not exceed \$40,000, two per centum per annum upon the amount by which such total net income exceeds \$40,000 and does not exceed \$60,000, three per centum per annum upon the amount by which such total net income exceeds \$60,000 and does not exceed \$80,000, four per centum per annum upon the amount by which such total net income exceeds \$80,000 and does not exceed \$100,000, five per centum per annum upon the amount by which such total net income exceeds \$100,000 and does not exceed \$150,000, six per centum per annum upon the amount by which such total net income exceeds \$150,000 and does not exceed \$200,000, seven per centum per annum upon the amount by which such total net income exceeds \$200,000 and does not

exceed \$250,000, eight per centum per annum upon the amount by which such total net income exceeds \$250,000 and does not exceed \$300,000, nine per centum per annum upon the amount by which such total net income exceeds \$300,000 and does not exceed \$500,000, ten per centum per annum upon the amount by which such total net income exceeds \$500,000 and does not exceed \$1,000,000, eleven per centum per annum upon the amount by which such total net income exceeds \$1,000,000 and does not exceed \$1,500,000, twelve per centum per annum upon the amount by which such total net income exceeds \$1,500,000 and does not exceed \$2,000,000, and thirteen per centum per annum upon the amount by which such total net income exceeds \$2,000,000.

For the purpose of the additional tax there shall be included as income the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed under this subdivision.

(c) The foregoing normal and additional tax rates shall apply to the entire net income, except as hereinafter provided, received by every taxable person in the calendar year nineteen hundred and sixteen and in each calendar year thereafter. [39 Stat. L. 756.]

The foregoing § 1, and the following §§ 2-14, constitute "Title I.—Income Tax" comprising "Part I.—On Individuals" and "Part II.—On Corporations" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given in subdivision XV of this title, *infra*, p. 374.

A tax in addition to that imposed by subdivisions (a) and (b) of this section was imposed by the Act of Oct. 3, 1917, ch. —, title I, §§ 1 and 2, *infra*, p. 336.

The amount of personal exemption allowed was prescribed by § 7 of this Act as amended, *infra*, p. 319, and the Act of Oct. 3, 1917, ch. —, title I, § 3, *infra*, p. 337.

The time for filing returns was prescribed by § 8 of this Act, and the time for payment of the tax was prescribed by § 9 of this Act, *infra*, pp. 320, 322.

SEC. 2. Income defined [—sources included—dividends—estates of deceased persons—trusts, etc.]. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income, derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) Income received by estates of deceased persons during the period of administration or settlement of the estate, shall be subject to the normal and additional tax and taxed to their estates, and also such income of estates or any kind of property held in trust, including such income accumulated in trust for the benefit of the unborn or unascertained persons,

or persons with contingent interests, and income held for future distribution under the terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be: *Provided*, That where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed.

Such trustees, executors, administrators, and other fiduciaries are hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they make as such trustees, or other fiduciaries.

(c) For the purpose of ascertaining the gain derived from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived. [39 Stat. L. 757, as amended by — Stat. L. —.]

See the note to the preceding. § 1 of this Act.

Subdivision (a) of the foregoing § 2 was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1200. As originally enacted it was as follows:

"(a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: *Provided*, That the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value."

SEC. 3. Additional tax includes undistributed profits. For the purpose of the additional tax, the taxable income of any individual shall include the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies or associations, or insurance companies, however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company or association, or insurance company, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable

for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company or association, or insurance company shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed. [39 Stat. L. 758.]

See the note to § 1 of this Act, *supra*, p. 312.

SEC. 4. Income exempt from law. The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States (but, in the case of obligations of the United States issued after September first, nineteen hundred and seventeen, only if and to the extent provided in the Act authorizing the issue thereof) or its possessions or securities issued under the provisions of the Federal Farm Loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected and the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government. [39 Stat. L. 758, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

The foregoing section 4 was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1200. As originally enacted it was as follows:

“**SEC. 4. Income Exempt from Law.** The following income shall be exempt from the provisions of this title:

“The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government. [39 Stat. L. 758.]”

The Federal Farm Loan Act of July 17, 1916, ch. 256, mentioned in the text is given *ante*, p. 14.

SEC. 5. Deductions allowed. That in computing net income in the case of a citizen or resident of the United States —

(a) For the purpose of the tax there shall be allowed as deductions —

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title;

Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes) or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided, That* for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

Eighth. (a) In the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided, That* when the allowances authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

Ninth. Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts

shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(b) **Credits allowed.** For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or insurance company, which is taxable upon its net income as hereinafter provided;

(c) A like credit shall be allowed as to the amount of income, the normal tax upon which has been paid or withheld for payment at the source of the income under the provisions of this title. [39 Stat. L. 759, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

This section was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1201. The amendment consisted in changing paragraphs "second" and "third" of subdivision (a), which were originally as follows:

"*Second.* All interest paid within the year on his indebtedness;

"*Third.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;"

to read as given in the text, and the addition of a new paragraph "ninth" at the end of said subdivision (a).

SEC. 6. Nonresident aliens [—computation of income—deductions allowed]. That in computing net income in the case of a nonresident alien —

(a) For the purpose of the tax there shall be allowed as deductions —

First. The necessary expenses actually paid in carrying on any business or trade conducted by him within the United States, not including personal, living, or family expenses;

Second. The proportion of all interest paid within the year by such person on his indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in business or trade conducted by him within the United States, and losses of property within the United States arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the amount of such loss or losses sustained in trade, or speculative transactions not in trade, from the same or any kind of property acquired before

March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss or losses sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom in the United States;

Sixth. Debts arising in the course of business or trade conducted by him within the United States due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property within the United States arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) There shall also be allowed the credits specified by subdivisions (b) and (c) of section five.

(c) A nonresident alien individual shall receive the benefit of the deductions and credits provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of this failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax. [39 Stat. L. 760, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

This section was amended to read as given in the text by the Act of Oct. 3, 1917, ch. —, title XII, § 1202. The amendments consisted in the substitution of paragraphs "second" and "third" to read as given in the text for the original paragraphs, which were as follows:

"*Second.* The proportion of all interest paid within the year by such person on his indebtedness which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

"*Third.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;"
and the adding of the new final paragraph (c).

SEC. 7. Personal exemption [— limitations — guardians or trustees — estates of decedents]. That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each citizen or resident of the United States, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That if the person making the return is the head of a family there shall be an additional exemption of \$200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, but this provision shall operate only in the case of one parent in the same family: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than as provided in this section, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased citizens or residents of the United States during the period of administration or settlement, and of trust or other estates of citizens or residents of the United States the income of which is not distributed annually or regularly under the provisions of subdivision (b) of section two, the sum of \$3,000, including such deductions as are allowed under section five. [39 Stat. L. 761, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

This section was amended to read as given in the text by the Act of Oct. 3, 1917, ch. —, title XII, § 1203. As originally enacted it was as follows:

"SEC. 7. Personal Exemption.—(a) That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than \$3,000, or, if married, \$4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of \$3,000, including such deductions as are allowed under section five.

"(b) A nonresident alien individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax."

Subdivision "(h)" of this section as originally enacted was repealed by said amending section.

The personal exemption was reduced by the Act of Oct. 3, 1917, ch. —, title 1, § 3, *infra*, p. 337.

SEC. 8. Returns [— when to be filed — by whom to be filed]. (a) The tax shall be computed upon the net income, as thus ascertained, of each person subject thereto, received in each preceding calendar year ending December thirty-first.

(b) On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of \$3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: *Provided*, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: *Provided further*, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return.

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations, acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph: *Provided further*, That no return of income not exceeding \$3,000 shall be required except as in this title otherwise provided.

(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be

liable for tax, normal and additional, there shall be excluded their proportionate shares received from interests on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States (if and to the extent that it is provided in the Act authorizing the issue of such obligations of the United States that they are exempt from taxation), and its possessions, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. Such partnership, when requested by the Commissioner of Internal Revenue or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed. A partnership shall have the same privilege of fixing and making returns upon the basis of its own fiscal year as is accorded to corporations under this title. If a fiscal year ends during nineteen hundred and sixteen or a subsequent calendar year for which there is a rate of tax different from the rate for the preceding calendar year, then (1) the rate for such preceding calendar year shall apply to an amount of each partner's share of such partnership profits equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rate for the calendar year during which such fiscal year ends shall apply to the remainder.

(f) In every return shall be included the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

(g) An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make his return upon the basis upon which his accounts are kept, in which case the tax shall be computed upon his income as so returned. [39 Stat. L. 761, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

This section was amended by the Act of Oct. 3, 1917, ch. —, title XII, § 1204. The amendment consisted in the substitution of subdivisions (c) and (e) as given in the text for those originally enacted, which were as follows:

"(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

"(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided

or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed."

Said amending section also repealed a subdivision "(d)" contained in this section as originally enacted and which was as follows:

"(d) All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

"That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding \$3,000 shall be required, except as in this title provided."

The personal exemption of \$3,000 mentioned in this section was reduced by the Act of Oct. 3, 1917, ch. —, title 1, § 3, *infra*, p. 337.

SEC. 9. Assessment and administration [— notification — time of payment]. (a) That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors,

administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

(c) The amount of the normal tax hereinbefore imposed shall also be deducted and withheld from fixed or determinable annual or periodical gains, profits and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, (if such bonds, mortgages, or other obligations contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States) whether payable annually or at shorter or longer periods and whether such interest is payable to a nonresident alien individual or to an individual citizen or resident of the United States, subject to the provisions of the foregoing subdivision (b) of this section requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government, unless the person entitled to receive such interest shall file with the withholding agent, on or before February first, a signed notice in writing claiming the benefit of an exemption under section seven of this Title.

(f) All persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to obtain the information required under this title, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and whoever knowingly undertakes to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

(g) The tax herein imposed upon gains, profits, and incomes not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this section, except subdivision (c), relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon nonresident alien individuals. [39 Stat. L. 763, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Subdivisions (b), (c), (f), and (g) of the foregoing section 9 were amended to read as given in the text, and subdivisions (d) and (e) of said section were repealed by the Act of Oct. 3, 1917, ch. —, title XII, § 1205. As originally enacted the subdivisions so amended and repealed were as follows:

"(b) All persons, firms, copartnerships, companies, corporations, joint-stock companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than income derived from dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations, or insurance companies, the income of which is taxable under this title, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, association, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

"In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the personal exemption allowed in section seven of this title except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a signed notice in writing claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of not exceeding \$300.

"And where the income tax is paid or to be paid at the source, no person shall be allowed the benefit of any deduction provided for in sections five or six of this title unless he shall, not less than thirty days prior to the day on which the return of his income is due, either (1) file with the person who is required to withhold and pay tax for him a true and correct return of his gains, profits and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or (2) likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided*, That when any amount allowable as a deduction is known at the time of receipt of fixed annual or periodical income by an individual subject to tax, he may file with the person, firm, or corporation making the

payment a certificate, under penalty for false claim, and in such form as shall be prescribed by the Commissioner of Internal Revenue, stating the amount of such deduction and making a claim for an allowance of the same against the amount of tax otherwise required to be deducted and withheld at the source of the income, and such certificate shall likewise become a part of the return to be made in his behalf.

"If such person is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made an agent, he making oath that he has sufficient knowledge of the affairs and property of his principal to enable him to make a full and complete return, and that the return and application made by him are full and complete.

"(c) The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this title requiring the tax to be withheld at the source and deducted from annual income returned and paid to the Government.

"(d) And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.

"And the tax in such cases shall be withheld, deducted, and returned for and in behalf of any person subject to the tax hereinbefore imposed, although such interest or dividends do not exceed \$3,000, by (1) any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and (2) any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also (3) any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise from a banker or another dealer in such coupons.

"(e) Where the tax is withheld at the source, the benefit of the exemption and the deductions allowable under this title may be had by complying with the foregoing provisions of this section.

"(f) All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

"(g) The tax herein imposed upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered."

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

PART II.—ON CORPORATIONS.

SEC. 10. [Corporations—amount of tax.] (a) That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corpora-

tion, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies, whose net income is taxable under this title.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and sixteen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company or association, or insurance company, of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained.

(b) In addition to the income tax imposed by subdivision (a) of this section there shall be levied, assessed, collected, and paid annually an additional tax of ten per centum upon the amount, remaining undistributed six months after the end of each calendar or fiscal year, of the total net income of every corporation, joint-stock company or association, or insurance company, received during the year, as determined for the purposes of the tax imposed by such subdivision (a), but not including the amount of any income taxes paid by it within the year imposed by the authority of the United States.

"The tax imposed by this subdivision shall not apply to that portion of such undistributed net income which is actually invested and employed in the business or is retained for employment in the reasonable requirements of the business or is invested in obligations of the United States issued after September first, nineteen hundred and seventeen: *Provided*, That if the Secretary of the Treasury ascertains and finds that any portion of such amount so retained at any time for employment in the business is not so employed or is not reasonably required in the business a tax of fifteen per centum shall be levied, assessed, collected, and paid thereon.

The foregoing tax rates shall apply to the undistributed net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and seventeen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rates shall apply to the proportion of the taxable undistributed net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and seventeen, which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year. [39 Stat. L. 765, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

The foregoing section 10 was amended by the Act of Oct. 3, 1917, ch. —, title XII, § 1206, to read as given in the text, the amendment consisting of a substitution for the first paragraph of this section and the addition of a new subdivision "(b)." Said first paragraph of this section as originally enacted was as follows:

"That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two percentum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: *Provided*, That the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value."

A tax in addition to that imposed by subdivision (a) of this section was imposed by the Act of Oct. 3, 1917, ch. —, Title I, § 4, *infra*, p. 338.

SEC. 11. Conditional and other exemptions. (a) There shall not be taxed under this title any income received by any —

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan association and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes."

Fourteenth. Joint stock land banks as to income derived from bonds or debentures of other joint stock land banks or any Federal land bank belonging to such joint stock land bank.

(b) There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon

the part or portion of the said income to which such person or corporation shall be entitled under such contract. [39 Stat. L. 766.]

See the notes to § 1 of this Act, *supra*, p. 312.

The Federal Farm Loan Act of July 17, 1916, ch. 245, § 26, mentioned in this section, is given in AGRICULTURE, *ante*, p. 14.

Corporations exempt from tax under the provisions of this section, and partnerships and individuals carrying on or doing the same business, or coming within the same description, are exempt from the excess profits tax imposed by the Act of Oct. 3, 1917, ch. —, title II, by virtue of section 201 thereof, *infra*, p. 343.

SEC. 12. Deductions. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources —

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross

premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deduction from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company shall be deducted;

Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

(b) In the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting

from the gross amount of its income received within the year from all sources within the United States —

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) and in the case (a) of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided, further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits.

(c) In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds. [39 Stat. L. 767, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Paragraphs "Third" and "Fourth" of subdivision (a) and paragraphs "Third" and "Fourth" of subdivision (b) of this section were amended to read as here given by the Act of Oct. 3, 1917, ch. —, Title XII, § 1208. These paragraphs as originally enacted, were, respectively, as follows:

"[Subdivision (a)]. *Third.* The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other

tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

"Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits."

"[Subdivision (b)]. Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

"Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits."

SEC. 13. Returns. (a) The tax shall be computed upon the net income, as thus ascertained, received within each preceding calendar year ending December thirty-first: *Provided*, That any corporation, joint-stock company or association, or insurance company, subject to this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the first day of March of the year in which its return would be filed if made upon the basis of the calendar year;

(b) Every corporation, joint-stock company or association, or insurance company, subject to the tax herein imposed, shall, on or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, or, if it has designated a fiscal year for the computation of its tax, then within sixty days after the close of such fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, and the close of each such fiscal year thereafter, render a true and accurate return of its annual net income in the manner and form to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and containing such facts, data, and information as are appropriate and in the opinion of the commissioner necessary to determine the correctness of the net income returned and to carry out the provisions of this title. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer or assistant treas-

urer. The return shall be made to the collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, or in the case of a foreign corporation, company, or association, to the collector of the district in which is located its principal place of business in the United States, or if it have no principal place of business, office, or agency in the United States, then to the collector of internal revenue at Baltimore, Maryland. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue;

(c) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, joint-stock companies or associations, or insurance companies, subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations, and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

(d) A corporation, joint-stock company or association, or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of non-resident alien individuals from sources within the United States shall be made applicable to the tax imposed by subdivision (a) of section ten upon incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, not engaged in business or trade within the United States and not having any office or place of business therein.

(f) Likewise, all the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by non-resident alien companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within

the United States and not having any office or place of business therein. [39 Stat. L. 770, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Subdivision (e) of this section was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1208. Said subdivision as originally enacted was as follows:

“(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein.”

SEC. 14. Assessment and administration. (a) All assessments shall be made and the several corporations, joint-stock companies or associations and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the fifteenth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in case of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, or after one hundred and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due: *Provided*, That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled, “An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes,” and the Act of October third, nineteen hundred and thirteen, entitled, “An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,” if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes;

(b) When the assessment shall be made, as provided in this title, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of

Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe;

(c) If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000: *Provided*, That the Commissioner of Internal Revenue shall have authority, in the case of either corporations or individuals, to grant a reasonable extension of time in meritorious cases, as he may deem proper. * * *
[39 Stat. L. 772.]

See the notes to § 1 of this Act, *supra*, p. 312.

A further subdivision (d) of this section amended R. S. sec. 3225 and is given, *supra*, p. 279.

SEC. 1212. [Taxes withheld by withholding agent — release.] That any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act. [— Stat. L. —.]

This section is the final section of title XII of the Act of Oct. 3, 1917, ch. —. See the notes to section 1000 of this Act, *infra*, p. 382, and see also the notes to the following paragraph of the text.

SECTION 1. [Normal tax — amount.] That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled “An Act to increase the revenue, and for other purposes,” approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter. [— Stat. L. —.]

The foregoing section 1 and the following sections 2-5 constitute “Title 1.— War Income Tax” of the Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses, and for other purposes.” General administrative pro-

visions of this Act, which affect these sections and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

The Act of Sept. 8, 1916, ch. 463, § 1, subdivision (a), mentioned in this section is given *supra*, p. 312.

SEC. 2. [Additional income tax.] That in addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

One per centum per annum upon the amount by which the total net income exceeds \$5,000 and does not exceed \$7,500;

Two per centum per annum upon the amount by which the total net income exceeds \$7,500 and does not exceed \$10,000;

Three per centum per annum upon the amount by which the total net income exceeds \$10,000 and does not exceed \$12,500;

Four per centum per annum upon the amount by which the total net income exceeds \$12,500 and does not exceed \$15,000;

Five per centum per annum upon the amount by which the total net income exceeds \$15,000 and does not exceed \$20,000;

Seven per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$40,000;

Ten per centum per annum upon the amount by which the total net income exceeds \$40,000 and does not exceed \$60,000;

Fourteen per centum per annum upon the amount by which the total net income exceeds \$60,000 and does not exceed \$80,000;

Eighteen per centum per annum upon the amount by which the total net income exceeds \$80,000 and does not exceed \$100,000;

Twenty-two per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$150,000;

Twenty-five per centum per annum upon the amount by which the total net income exceeds \$150,000 and does not exceed \$200,000;

Thirty per centum per annum upon the amount by which the total net income exceeds \$200,000 and does not exceed \$250,000;

Thirty-four per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$300,000;

Thirty-seven per centum per annum upon the amount by which the total net income exceeds \$300,000 and does not exceed \$500,000;

Forty per centum per annum upon the amount by which the total net income exceeds \$500,000 and does not exceed \$750,000;

Forty-five per centum per annum upon the amount by which the total net income exceeds \$750,000 and does not exceed \$1,000,000;

Fifty per centum per annum upon the amount by which the total net income exceeds \$1,000,000. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

The Act of Sept. 8, 1916, ch. 463, § 1, subdivision (b), mentioned in this section is given, *supra*, p. 312.

SEC. 3. [Taxes — how computed, levied, assessed, collected and paid — personal exemptions — income derived from interest.] That the taxes imposed by sections one and two of this Act shall be computed, levied,

assessed, collected, and paid upon the same basis and in the same manner as the similar taxes imposed by section one of such Act of September eighth, nineteen hundred and sixteen, except that in the case of the tax imposed by section one of this Act (a) the exemptions of \$3,000 and \$4,000 provided in section seven of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be, respectively, \$1,000 and \$2,000, and (b) the returns required under subdivisions (b) and (c) of section eight of such Act as amended by this Act shall be required in the case of net incomes of \$1,000 or over, in the case of unmarried persons, and \$2,000 or over in the case of married persons, instead of \$3,000 or over, as therein provided, and (c) the provisions of subdivision (c) of section nine of such Act, as amended by this Act, requiring the normal tax of individuals on income derived from interest to be deducted and withheld at the source of the income shall not apply to the new two per centum normal tax prescribed in section one of this Act until on and after January first, nineteen hundred and eighteen, and thereafter only one two per centum normal tax shall be deducted and withheld at the source under the provisions of such subdivision (c), and any further normal tax for which the recipient of such income is liable under this Act or such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be paid by such recipient. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

The Act of Sept. 8, 1916, ch. 463, §§ 7, 8, and 9, mentioned in this section is given, *supra*, p. 319.

SEC. 4. [Additional tax on corporations, insurance companies, etc.—computation, etc.] That in addition to the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year.

The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

The Act of Sept. 8, 1916, ch. 463, § 10, mentioned in this section is given, *supra*, p. 325.

SEC. 5. [Territory affected by title.] That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

VIII. EXCISE TAX

SEC. 600. [Automobiles, musical instruments, moving picture films, jewelry, games and sporting goods, toilet articles, medicines, chewing gum, cameras.] That there shall be levied, assessed, collected, and paid —

(a) Upon all automobiles, automobile trucks, automobile wagons, and motorcycles, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(b) Upon all piano players, graphaphones, phonographs, talking machines, and records used in connection with any musical instrument, piano player, graphaphone, phonograph, or talking machine, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(c) Upon all moving-picture films (which have not been exposed) sold by the manufacturer or importer a tax equivalent to one-fourth of 1 cent per linear foot; and

(d) Upon all positive moving-picture films (containing a picture ready for projection) sold or leased by the manufacturer, producer, or importer, a tax equivalent to one-half of 1 cent per linear foot; and

(e) Upon any article commonly or commercially known as jewelry, whether real or imitation, sold by the manufacturer, producer, or importer thereof, a tax equivalent to three per centum of the price for which so sold; and

(f) Upon all tennis rackets, golf clubs, baseball bats, lacrosse sticks, balls of all kinds, including baseballs, foot balls, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards, and pieces, dice, games, and parts of games, except playing cards and children's toys and games, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(g) Upon all perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentifrices, tooth pastes, aromatic cachous, toilet soaps and powders, or any similar substances, article, or preparation by whatsoever name known or distinguished, upon all of the above which are used or applied or intended to be used or applied for toilet purposes, and which are sold by the manufacturer, importer, or producer, a tax equivalent to two per centum of the price for which so sold; and

(h) Upon all pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section three

hundred and thirteen of this Act), essences, spirits, oils, and all medicinal preparations, compounds, or compositions whatsoever, the manufacturer or producer of which claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trademark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, and which are sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

(i) Upon all chewing gum or substitute therefor sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

(j) Upon all cameras sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold.
[— *Stat. L.* —.]

The foregoing section 600 and the following sections 601–603 constitute “Title VI.—War Excise Tax” of an Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses, and for other purposes.” General administrative provisions which affect these sections and should be read in connection therewith are given in subdivision XV of this title, *infra*, p. 374.

SEC. 601. [Returns.] That each manufacturer, producer, or importer of any of the articles enumerated in section six hundred shall make monthly returns under oath in duplicate and pay the taxes imposed on such articles by this title to the collector of internal revenue for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. [— *Stat. L.* —.]

See the notes to the preceding section 600 of this Act.

SEC. 602. [Articles on hand at time of taking effect of Act.] That upon all articles enumerated in subdivisions (a), (b), (e), (f), (g), (h), (i), or (j) of section six hundred, which on the day of this Act is passed are held and intended for sale by any person, corporation, partnership, or association, other than (1) a retailer who is not also a wholesaler, or (2) the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax equivalent to one-half the tax imposed by each such subdivision upon the sale of the articles therein enumerated. This tax shall be paid by the person, corporation, partnership, or association so holding such articles.

The taxes imposed by this section shall be assessed, collected, and paid in the same manner as provided in section ten hundred and two in the case of additional taxes upon articles upon which the tax imposed by existing law has been paid.

Nothing in this section shall be construed to impose a tax upon articles sold and delivered prior to May ninth, nineteen hundred and seventeen,

where the title is reserved in the vendor as security for the payment of the purchase money. [— *Stat. L.* —.]

See the notes to section 600 of this Act, *supra*, p. 339.

SEC. 603. [Yachts and boats.] That on the day this Act takes effect, and thereafter on July first in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July first, there shall be levied, assessed, collected, and paid upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade or national defense, or not built according to plans and specifications approved by the Navy Department, an excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, 50 cents for each foot, length over fifty feet and not over one hundred feet, \$1 for each foot, length over one hundred feet, \$2 for each foot; motor boats of not over five net tons with fixed engines, \$5.

In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of overall length shall govern.

In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July first, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months, including the month of sale, remaining prior to the following July first. [— *Stat. L.* —.]

See the notes to section 600 of this Act, *supra*, p. 339.

IX. EXCESS PROFITS

SEC. 200. [Definitions — “corporation” — “domestic” — “United States” — “taxable year” — “pre-war period” — “trade” — “business” — “net income.”] That when used in this title —

The term “corporation” includes joint-stock companies or associations and insurance companies;

The term “domestic” means created under the law of the United States, or of any State, Territory, or District thereof, and the term “foreign” means created under the law of any other possession of the United States or of any foreign country or government;

The term “United States” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “taxable year” means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received

during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and

The term "prewar period" means the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, or, if a corporation or partnership was not in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

The terms "trade" and "business" include professions and occupations.

The term "net income" means in the case of a foreign corporation or partnership or a nonresident alien individual, the net income received from sources within the United States. [— *Stat. L.* —.]

The foregoing section 200 and the following sections 201-214 constitute "Title II—War Excess Profits Tax" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." General administrative provisions of this Act which affect these sections and should be read in connection therewith are given under subdivision XV of this title, *infra*, p. 374.

A former excess profits tax law was contained in the Act of March 3, 1917, ch. 159, Title II, §§ 200-207, 39 Stat. L. 1000. This was repealed by section 214 of this Act, *infra*, p. 350, which provided that any amount heretofore or hereafter paid on account of the repealed Act should be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeded the amount of such tax the excess should be refunded as a tax erroneously collected. The provisions of the repealed Act were as follows:

"SEC. 200. That when used in this title—

"The term 'corporation' includes joint-stock companies or associations, and insurance companies;

"The term 'United States' means only the States, the Territories of Alaska and Hawaii, and the District of Columbia; and

"The term 'taxable year' means the twelve months ending December thirty-first, except in the case of a corporation or partnership allowed to fix its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen.

"SEC. 201. That in addition to the taxes under existing laws there shall be levied, assessed, collected, and paid for each taxable year upon the net income of every corporation and partnership organized, authorized, or existing under the laws of the United States, or of any State, Territory, or District thereof, no matter how created or organized, excepting income derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, a tax of eight per centum of the amount by which such net income exceeds the sum of (a) \$5,000 and (b) eight per centum of the actual capital invested.

"Every foreign corporation and partnership, including corporations and partnerships of the Philippine Islands and Porto Rico, shall pay for each taxable year a like tax upon the amount by which its net income received from all sources within the United States exceeds the sum of (a) eight per centum of the actual capital invested and used or employed in the business in the United States, and (b) that proportion of \$5,000 which the entire actual capital invested and used or employed in the business in the United States bears to the entire actual capital invested; and in case no such capital is used or employed in the business which the net income from sources within the United States bears to the entire net income, and (b) that proportion of \$5,000 which the net income from sources within the United States bears to the entire net income.

"SEC. 202. That for the purpose of this title, actual capital invested means (1) actual cash paid in, (2) the actual cash value, at the time of payment, of assets other than cash paid in, and (3) paid in or earned surplus and undivided profits

used or employed in the business; but does not include money or other property borrowed by the corporation or partnership.

"SEC. 203. That the tax herein imposed upon corporations and partnerships shall be computed upon the basis of the net income shown by their income tax returns under Title I of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, or under this title, and shall be assessed and collected at the same time and in the same manner as the income tax due under Title I of such Act of September eighth, nineteen hundred and sixteen: *Provided*, That for the purpose of this title a partnership shall have the same privilege with reference to fixing its fiscal year as is accorded corporations under section thirteen (a) of Title I of such Act of September eighth, nineteen hundred and sixteen: *And provided further*, That where a corporation or partnership makes return prior to March first, nineteen hundred and eighteen, covering its own fiscal year and includes therein any income received during the calendar year ending December thirty-first, nineteen hundred and sixteen, the tax herein imposed shall be that proportion of the tax based upon such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year.

"SEC. 204. That corporations exempt from tax under the provisions of section eleven of Title I of the Act approved September eighth, nineteen hundred and sixteen, and partnerships carrying on or doing the same business shall be exempt from the provisions of this title, and the tax imposed by this title shall not attach to incomes of partnerships derived from agriculture or from personal services.

"SEC. 205. That every corporation having a net income of \$5,000 or more for the taxable year making a return under Title I of such Act of September eighth, nineteen hundred and sixteen, shall for the purposes of this title include in such return a detailed statement of the actual capital invested.

"Every partnership having a net income of \$5,000 or more for the taxable year shall render a correct return of the income of the partnership for the taxable year, setting forth specifically the actual capital invested and the gross income for such year and the deductions hereinafter allowed. Such returns shall be rendered at the same time and in the same manner and form as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen. In computing net income of a partnership for the purposes of this title there shall be allowed like deductions as are allowed to individuals in sections five (a) and six (a) of such Act of September eighth, nineteen hundred and sixteen.

"SEC. 206. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax required by this title.

"SEC. 207. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation or partnership subject to the provisions of this title to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax provided for in this title."

SEC. 201. [Amount of tax—incomes affected—incomes excepted.]
That in addition to the taxes under the existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan. [—*Stat. L.* —.]

See the notes to the preceding section 200 of this Act.

The Act of Sept. 8, 1916, ch. 463, title I, § 11, mentioned in this section, is given *supra*, p. 327.

The tax on trades or business having no invested capital is prescribed by section 209 of this Act, *infra*, p. 348, in lieu of that prescribed by this section.

SEC. 202. [Foreign corporation or partnership — nonresident alien individual.] That the tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a nonresident alien individual, the net income of which trade or business during the taxable year is less than \$3,000. [—*Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 203. [Deductions.] That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—

(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$3,000;

(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$6,000;

(c) In the case of a foreign corporation or partnership or of a non-resident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of \$3,000 or \$6,000.

(d) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five. [— *Stat. L.*—.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 204. [Deductions continued.] That if a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States, \$6,000.

A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 205. [Deductions continued.] (a) That if the Secretary of the Treasury, upon complaint finds either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or business, or (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of the tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 206. [Basis for ascertainment and return of net income.] That for the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and eleven and nineteen hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year nineteen hundred and thirteen upon the same basis and in the same manner as provided in section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen,

as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted. There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act; and (b) in the case of a foreign partnership the same deductions as allowed to individuals in subdivision (a) of section six of such Act as amended by this Act. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

For the Act of Aug. 5, 1909, ch. 6, § 38, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 829, 4 Fed. Stat. Ann. (2d ed.) 255.

For the Act of Oct. 3, 1913, ch. 16, § II, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 185; 4 Fed. Stat. Ann. (2d ed.) 236.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in this section, is given *supra*, p. 312.

SEC. 207. [“Invested capital”—meaning of term.] That as used in this title, the term “invested capital” for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

As used in this title “invested capital” does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations:

(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stocks or shares specifically issued therefor), and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year: *Provided*, that (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of

the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock;

(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into the trade or business, at the time of such payment, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

In the case of a foreign corporation or partnership or of a non-resident alien individual the term "invested capital" means that proportion of the entire invested capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 208. [Reorganization, consolidation or change of ownership of trade or business.] That in case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 209. [Trade or business having no invested capital — deductions.] That in the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of the following deductions: In the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000; in the case of all other trades or business, no deduction. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 210. [Invested capital not determinable — deductions.] That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 211. [Partnerships — return.] That every foreign partnership having a net income of \$3,000 or more for the taxable year, and every domestic partnership having a net income of \$6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in the text, is given *supra*, p. 312.

SEC. 212. [Administrative laws, etc., applicable to title.] That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in the text, is given *supra*, p. 312.

SEC. 213. [Rules and regulations — corporations, etc., to furnish data.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 214. [Former excess profits tax law repealed — munition manufacturer's tax law amended.] That Title II (sections two hundred to two hundred and seven, inclusive) of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, is hereby repealed.

Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected.

Subdivision (1) of section three hundred and one of such Act of September eight, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided. * * * [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of March 3, 1917, ch. 159, Title II, §§ 200-207, 39 Stat. L. 1000, repealed by this section, is set out in the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title III, § 300, amended by this section, is set out *infra*, this page, and a further amendment made by a provision of this section, omitted here, is incorporated therein.

X. MUNITION MANUFACTURES

SEC. 300. [Definitions — "person" — "taxable year" — "United States."] That when used in this title —

The term "person" includes partnerships, corporations, and associations;

The term "taxable year" means the twelve months ending December thirty-first. The first taxable year shall be the twelve months ending December thirty-first, nineteen hundred and sixteen; and

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia. [39 Stat. L. 780.]

The foregoing section 300, and the following sections 301-312, constitute "Title III — Munition Manufacturer's Tax" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." General administrative provisions of this Act, which affect these sections, and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

SEC. 301. [Amount of tax—time limit on section.] (1) That every person manufacturing (a) gunpowder and other explosives, excepting blasting powder and dynamite used for industrial purposes; (b) cartridges, loaded and unloaded, caps or primers, exclusive of those used for industrial purposes; (c) projectiles, shells, or torpedoes of any kind, including shrapnel, loaded or unloaded, or fuses, or complete rounds of ammunition; (d) firearms of any kind and appendages, including small arms, cannon, machine guns, rifles, and bayonets; (e) electric motor boats, submarine or submersible vessels or boats; or (f) any part of any of the articles mentioned in (b), (c), (d), or (e); shall pay for each taxable year, in addition to the income tax imposed by Title I, an excise tax of twelve and one-half per centum upon the entire net profits actually received or accrued for said year from the sale or disposition of such articles manufactured within the United States: *Provided, however,* That no person shall pay such tax upon net profits received during the year nineteen hundred and sixteen derived from the sale and delivery of the articles enumerated in this section under contracts executed and fully performed by such person prior to January first, nineteen hundred and sixteen.

(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen. [39 Stat. L. 781, as amended by — Stat. L. —.]

See the notes to the preceding section 300 of this Act.

This section was amended by the Act of Oct. 3, 1917, ch. —, Title II, § 214, *supra*, p. 350, by making the rate of tax for the taxable year 1917 ten per centum instead of twelve and one-half per centum, as is herein provided, and by substituting the subdivision "(2)" given in the text for the original subdivision "(2)," which was as follows:

"(2) This section shall cease to be of effect at the end of one year after the termination of the present European war, which shall be evidenced by the proclamation of the President of the United States declaring such war to have ended."

Any corporation, joint-stock company, or association or insurance company, actually paying the tax imposed by this section, is entitled to credit equal to the amount so actually paid as against any special excise tax imposed by the second and third paragraphs of section 407 of Title IV of this Act, *supra*, p. 282, by virtue of a proviso thereof.

SEC. 302. [Computation of net profits.] That in computing net profits under the provisions of this title, for the purpose of the tax there shall be allowed as deductions from the gross amount received or accrued for the taxable year from the sale or disposition of such articles manufactured within the United States, the following items:

- (a) The cost of raw materials entering into the manufacture;
- (b) Running expenses, including rentals, cost of repairs and maintenance, heat, power, insurance, management, salaries, and wages;
- (c) Interest paid within the taxable year on debts or loans contracted to meet the needs of the business, and the proceeds of which have been actually used to meet such needs;
- (d) Taxes of all kinds paid during the taxable year with respect to the business or property relating to the manufacture;
- (e) Losses actually sustained within the taxable year in connection with the business of manufacturing such articles, including losses from fire, flood, storm, or other casualty, and not compensated for by insurance or otherwise; and

(f) A reasonable allowance according to the conditions peculiar to each concern, for amortization of the values of buildings and machinery, account being taken of the exceptional depreciation of special plants. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 303. [Sales at less than fair market price.] If any person manufactures any article specified in section three hundred and one and, during any taxable year or part thereof, whether under any agreement, arrangement, or understanding, or otherwise, sells or disposes of any such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the gross amount received or accrued for such year or part thereof from the sale or disposition of such article shall be taken to be the amount which would have been received or accrued from the sale or disposition of such article if sold at the fair market price. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 304. [Returns to collector.] On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person manufacturing articles specified in section three hundred and one to the collector of internal revenue for the district in which such person has his principal office or place of business, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income received or accrued from the sale or disposition of the articles specified in section three hundred and one, and from the total thereof deducting the aggregate items of allowance authorized in section three hundred and two, and such other particulars as to the gross receipts and items of allowance as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may require. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 305. [Transmission of returns to commissioner — assessment of tax.] All such returns shall be transmitted forthwith by the collector to the Commissioner of Internal Revenue, who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before thirty days from the date of such notice. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 306. [Authority to go behind return — investigation of net profits by Secretary of Treasury or Commissioner.] If the Secretary of the Treasury or the Commissioner of Internal Revenue shall have reason to

be dissatisfied with the return as made, or if no return is made, the commissioner is authorized to make an investigation and to determine the amount of net profits and may assess the proper tax accordingly. He shall notify the person making, or who should have made, such return and shall proceed to collect the tax in the same manner as provided in this title, unless the person so notified shall file a written request for a hearing with the commissioner within thirty days after the date of such notice; and on such hearing the burden of establishing to the satisfaction of the commissioner that the gross amount received or accrued or the amount of net profits, as determined by the commissioner, is incorrect, shall devolve upon such person. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 307. [Assessment of tax against whom.] The tax may be assessed on any person for the time being owning or carrying on the business, or on any person acting as agent for that person in carrying on the business, or where a business has ceased, on the person who owned or carried on the business, or acted as agent in carrying on the business immediately before the time at which the business ceased. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 308. [Examination of books, etc.] For the purpose of carrying out the provisions of this title the Commissioner of Internal Revenue is authorized, personally or by his agent, to examine the books, accounts, and records of any person subject to this tax. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 309. [Communication of information obtained under provisions of title.] No person employed by the United States shall communicate, or allow to be communicated to any person not legally entitled thereto, any information obtained under the provisions of this title, or allow any such person to inspect or have access to any return furnished under the provisions of this title. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 310. [Violation of provisions of title — penalty.] Whoever violates any of the provisions of this title or the regulations made thereunder, or who knowingly makes false statements in any return, or refuses to give such information as may be called for, is guilty of a misdemeanor, and upon conviction shall, in addition to paying any tax to which he is liable, be fined not more than \$10,000, or imprisoned not exceeding one year, or both, in the discretion of the court. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 311. [Existing laws applicable to title.] All administrative, special, and general provisions of law, relating to the assessment and collection of taxes not specifically repealed, are hereby made to apply to this

title so far as applicable and not inconsistent with its provisions. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 312. [Regulations — additional information required.] The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any person subject to such provisions to furnish him with further information whenever in his judgment the same is necessary to collect the tax provided for herein. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

XI. ADMISSIONS AND DUES

SEC. 700. [Tax on admissions — by whom paid — “admissions” construed.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax of 1 cent for each ten cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission: *Provided*, That the tax on admission of children under twelve years of age where an admission charge for such children is made shall in every case be 1 cent; and (b) in the case of persons (except bona fide employees, municipal officers on official business, and children under twelve years of age) admitted free to any place at a time when and under circumstances under which an admission charge is made to other persons of the same class, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted; and (c) a tax of 1 cent for each 10 cents or fraction thereof paid for admission to any public performance for profit at any cabaret or other similar entertainment to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be computed under rules prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, such tax to be paid by the person paying for such refreshment, service, or merchandise. In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement there shall be levied, assessed, collected, and paid a tax equivalent to ten per centum of the amount for which a similar box or seat is sold for performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder. These taxes shall not be imposed in the case of a place the maximum charge for admission to which is 5 cents, or in the case of shows, rides, and other amusements, (the maximum charge for admission to which is 10 cents) within outdoor general amusement parks, or in the case of admission to such parks.

No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational or charitable institutions, societies, or organizations, or admissions

to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

The term "admission" as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor. [— *Stat. L.* —.]

The foregoing section 700 and the following sections 701, 702 constitute "Title VII.— War Tax on Admissions and Dues" of an Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." General administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 701. [Club dues.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid, a tax equivalent to ten per centum of any amount paid as dues or membership fees (including initiation fees), to any social, athletic, or sporting club or organization, where such dues or fees are in excess of \$12 per year; such taxes to be paid by the person paying such dues or fees: *Provided*, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents. [— *Stat. L.* —.]

See the notes to the preceding section 700 of this Act.

SEC. 702. [Tax — by whom collected — returns.] That every person, corporation, partnership, or association (a) receiving any payments for such admission, dues, or fees, shall collect the amount of the tax imposed by section seven hundred or seven hundred and one from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made shall collect the amount of the tax imposed by section seven hundred from the person so admitted, and (c) in either case shall make returns and payments of the amount so collected, at the same time and in same manner as provided in section five hundred and three of this Act. [— *Stat. L.* —.]

See the notes to section 700 of this Act, *supra*, p. 354.

XII. FACILITIES FURNISHED BY PUBLIC UTILITIES AND INSURANCE

SEC. 500. [Transportation of person and property — messages and telephone conversations.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax equivalent to three per centum of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another; (b) a

tax of 1 cent for each 20 cents, or fraction thereof, paid to any person, corporation, partnership, or association, engaged in the business of transporting parcels or packages by express over regular routes between fixed terminals, for the transportation of any package, parcel or shipment by express from one point in the United States to another: *Provided*, That nothing herein contained shall be construed to require the carrier collecting such tax to list separately in any bill of lading, freight receipt, or other similar document, the amount of the tax herein levied, if the total amount of the freight and tax be therein stated; (c) a tax equivalent to eight per centum of the amount paid for the transportation of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or to any point in Canada or Mexico, where the ticket therefor is sold or issued in the United States, not including the amount paid for commutation or season tickets for trips less than thirty miles, or for transportation the fare for which does not exceed 35 cents, and a tax equivalent to ten per centum of the amount paid for seats, berths, and staterooms in parlor cars, sleeping cars, or on vessels. If a mileage book used for such transportation or accommodation has been purchased before this section takes effect, or if cash fare be paid, the tax imposed by this section shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; if a ticket (other than a mileage book) is bought and partially used before this section goes into effect it shall not be taxed, but if bought but not so used before this section takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe; (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; (e) a tax of 5 cents upon each telegraph, telephone, or radio, dispatch, message, or conversation, which originates within the United States, and for the transmission of which a charge of 15 cents or more is imposed: *Provided*, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons, corporations, partnerships, or associations shall be used for the transmission of such dispatch, message, or conversation. [— *Stat. L.* —.]

The foregoing section 500 and the following sections 501-505 constitute "Title V.—War Tax on Facilities Furnished by Public Utilities, and Insurance" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." Additional administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

SEC. 501. [Tax by whom paid — exemptions.] That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: *Provided*, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariffs on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue: *Provided further*, That nothing in this or the preceding section shall be construed as imposing a tax (a) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (b) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier, which is also a part of the same system. [— *Stat. L.* —.]

See the notes to the preceding section 500 of this Act.

SEC. 502. [Exemptions — payment for services rendered government.] That no tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, Territory, or the District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

SEC. 503. [Returns.] That each person, corporation, partnership, or association receiving any payments referred to in section five hundred shall collect the amount of the tax, if any, imposed by such section from the person, corporation, partnership, or association making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under paragraph two of section five hundred and one to the collector of internal revenue of the district in which the principal office or place of business is located. Such returns shall contain such information, and be made in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

SEC. 504. [Insurance policies.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid the following taxes on the issuance of insurance policies:

(a) Life insurance: A tax equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy

of insurance, or other instrument, by whatever name the same is called: *Provided*, That on all policies for life insurance only by which a life is insured not in excess of \$500, issued on the industrial or weekly-payment plan of insurance, the tax shall be forty percentum of the amount of the first weekly premium. *Provided further*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(b) Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril: *Provided*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(c) Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage, or liability (except bonds taxable under subdivision two of schedule A of Title VIII) issued or executed or renewed by any person, corporation, partnership, or association, transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): *Provided*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(d) Policies issued by any person, corporation, partnership, or association, whose income is exempt from taxation under Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, shall be exempt from the taxes imposed by this section. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

Subdivision 2 of Schedule A of Title VIII, mentioned in subdivision (c) of this section is given *infra*, p. 371.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in paragraph (d) of this section, is given *supra*, p. 312.

SEC. 505. [Returns by insurance companies.] That every person, corporation, partnership, or association, issuing policies of insurance upon the issuance of which a tax is imposed by section five hundred and four, shall, within the first fifteen days of each month, make a return under oath, in duplicate, and pay such tax to the collector of internal revenue of the district in which the principal office or place of business of such person, corporation, partnership, or association is located. Such returns shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

XIII. COTTON FUTURES

[SEC. 1.] [United States Cotton Futures Act.] That this Act shall be known by the short title of the "United States cotton futures Act." [39 Stat. L. 476.]

The foregoing section 1 and the following sections 2-22 constitute "Part A" of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313. Preceding this first section was the following paragraph:

"That this Part, to be known as the United States Cotton Futures Act, be, and hereby is, enacted to read and be effective hereafter as follows:" etc.

Section 21 of this Act, *infra*, p. 367, repeals the former Cotton Futures Act of Aug. 18, 1914, ch. 255, given in 1916 Supp. Fed. Stat. Ann. 73, 4 Fed. Stat. Ann. (2d ed.) 277.

The former Cotton Futures Act of Aug. 18, 1914, ch. 255, repealed by this Act, having originated in the United States Senate contrary to the constitutional requirement that bills for raising revenue must originate in the House of Representatives, is not and never was a law of the United States. *Hubbard v. Lowe*, (S. D. N. Y. 1915) 226 Fed. 135, wherein it was held as a matter of law that the court must accept the statement of the records in the office of the Secretary of State that the Cotton Futures Act originated in the Senate. Reverting to this definite finding of law, the court said: "When the Congress, through its proper officials, certifies that it has gone through the forms of lawmaking in violation of an express constitutional mandate, is the result a law at all? Of course it is not; the question answers itself, unless there be some different treatment due to an act created in a fundamentally illegal manner and that accorded to one created for an unconstitutional purpose. There can be no such difference logically. Any and all violations of constitutional requirements vitiate a statute, and it has been so held in three states. *Succession of Givanovich*, 50 La. Ann., Pt. I, 625, 24 South. 679; *Succession of Sala*, 50 La. Ann., Pt. II, 1018, 24 South. 674; *Perry Co. v. Selma*, etc., R. R., 58 Ala. 546; *Thierman Co. v. Commonwealth*, 123 Ky. 740, 97 S. W. 366. It has not heretofore been found necessary to condemn an act of Congress for this kind of careless journey work, though it has sometimes required a good deal of mental strain to demonstrate that some piece of legislation originating in a Senate was a 'bill for raising revenue.' *Twin City Bank v. Nebeker*, 167 U. S. 196, 17 Sup. Ct. 766, 42 L. ed. 134; *United States v. James*, 13 Blatchf. 207, Fed. Cas. No. 15,464; *Dundee, etc. v. Parrish* (C. C.) 24 Fed. 197; *Geer v. Board of Commissioners*, 97 Fed. 435, 38 C. C. A. 250. If these courts had not assumed that a revenue bill of Senate origin was a nullity, why spend so much time in proving that the act under consideration was not such a bill? Defendant has urged upon the court that in *Rainey v. United States*, 232 U. S. at page 317, 34 Sup. Ct. at page 431, 58 L. ed. 617, the Supreme Court declined to state that there was 'judicial power after an act of Congress has been duly promulgated to inquire in which house it originated for the purpose of determining its validity.' There was nothing in the *Rainey* case requiring decision on the point here raised which is not (under the reasoning in *Field v. Clark*, *supra*), an inquiry as to the house of origin of the Cotton Futures Act. No inquiry is necessary. The certificate of Congress, the enrolled Act and Statutes at Large all proclaim the house in which Congress thought this bill originated, wherefore the sole question here is as to the effect of such a proclamation of unconstitutional action. To this situation the remark in the *Rainey* case has no application. It is not seen how the court can disregard the information furnished by the Congress itself. The Cotton Futures Act is not, and never was, a law of the United States. It is one of those legislative projects which, to be a law, must originate in the lower house."

SEC. 2. [Definition and construction.] That, for the purposes of this Act, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed

the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [39 Stat. L. 476.]

See the notes to the preceding section 1 of this Act.

SEC. 3. [Tax on contracts for future delivery.] That upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 4. [Contracts of sale—form and contents.] That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 5. [Contracts when exempt from tax.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

Seventh. Provide that, in case a dispute arises between the person making the tender and the person receiving the same, as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of said cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the costs thereof fixed, assessed, collected, and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

The provisions of the third, fourth, fifth, sixth, and seventh subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section five."

The Secretary of Agriculture is authorized to prescribe rules and regulations for carrying out the purposes of the seventh subdivision of this section, and his findings, upon any dispute referred to him under said seventh subdivision, made after the parties in interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true classification of the cotton involved. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 6. [Determining cotton values.] That for the purposes of section five of this Act the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall

be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 6A. [Contracts when exempt from tax.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract, and if the contract also comply with all the terms and conditions of section five hereof not inconsistent with this section: *Provided*, That nothing in this section shall be so construed as to relieve from the tax levied by section three of this Act any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this Act.

Contracts made in compliance with this section shall be known as "Section six A Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section six A."

Section ten of this Act shall not be construed to apply to any contract of sale made in compliance with section six A hereof. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 7. [Bona fide spot markets — designation.] That for the purposes of this Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 8. [Insufficient spot markets.] That in determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 9. [Standards of cotton established — changes of standards — preparation of forms.] That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the "Official cotton standards of the United States," and to adopt, change, or replace, the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: *Provided*, That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of promulgation thereof by the Secretary of Agriculture: *Provided further*, That, subsequent to six months after the date section three of this Act becomes effective, no change

or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

For the provisions of the Agricultural Appropriation Act of May 23, 1908, ch. 192, § 1, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 6; 1 Fed. Stat. Ann. (2d ed.) 239.

SEC. 10. [Contracts when exempt from tax—conforming to rules, etc.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof, if the contract comply with each of the following conditions:

First. Conform to the rules and regulations made pursuant to this Act.

Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States cotton futures Act, section ten."

This Act shall not be construed to impose a tax on any sale of spot cotton.

This section shall not be construed to apply to any contract of sale made in compliance with section five of this Act. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

This section was not to be construed to apply to any contract of sale made in compliance with section 6A of this Act, *supra*, p. 362, by virtue of the last paragraph thereof.

SEC. 11. [Payment of tax — stamps.] That the tax imposed by section three of this Act shall be paid by the seller of the cotton involved in

the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 12. [Unenforceable contracts.] That no contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 13. [Enforcement of Act — rules and regulations — agents.] That the Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he **may** deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section three of this Act, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section three of this Act to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. The provisions of the internal-revenue laws of the United States, so far as applicable, including sections thirty-one hundred and seventy-three, thirty-one hundred and seventy-four, and thirty-one hundred and seventy-five of the Revised Statutes, as amended, are hereby extended, and made to apply, to this Act. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

For R. S. secs. 3173, 3174 and 3175, mentioned in this section, see 3 Fed. Stat. Ann. 377-379; 3 Fed. Stat. Ann. (2d ed.) 1002-1005.

SEC. 14. [Penalties for violation of Act.] That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 15. [Informers rewarded—prosecution by United States attorneys when.] That in addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of \$2,000, to be recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 16. [Witnesses—immunity from prosecution.] That no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 17. [Exemption from penalty of person paying tax—right of states, etc., to tax.] That the payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 18. [Appropriation for enforcing Act.] That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum appropriated by the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page one thousand and seventeen), for "collecting the cotton futures tax," or so much thereof as may be necessary, to enable the Secretary of the Treasury to carry out the provisions of this Act and any duties remaining to be performed by him under the United States cotton futures Act of August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three). [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

The Act making an appropriation for "collecting the cotton futures tax" mentioned in this section is the Legislative, Executive, and Judicial Appropriation Act of March 4, 1915, ch. 141, § 1, 38 Stat. L. 1017.

For the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 73; 4 Fed. Stat. Ann. (2d ed.) 277. See also the notes to section 1 of this Act, *supra*, p. 359.

SEC. 19. [Appropriation for making investigations, etc.—reports—disposition of receipts.] That there are hereby appropriated out of any

moneys in the Treasury not otherwise appropriated, available until expended, the unexpended balance of the sum of \$150,000 appropriated by section twenty of the said Act of August eighteenth, nineteen hundred and fourteen, and for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum of \$75,000 appropriated for the "Enforcement of the United States cotton futures Act" by the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and sixteen (Thirty-eighth Statutes at Large, page one thousand and eighty-six), or so much of each of said unexpended balances as may be necessary, to be used by the Secretary of Agriculture for the same purposes, in carrying out the provisions of this Act, as those for which said sums, respectively, were originally appropriated, and to enable the Secretary of Agriculture to carry out any duties remaining to be performed by him under the said Act of August eighteenth, nineteen hundred and fourteen. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine, of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

For a reference to the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see the notes to the preceding section 18 of this Act.

SEC. 20. [Time of taking effect.] That sections nine, eighteen, and nineteen of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after the first day of the calendar month next succeeding the date of the passage of this Act: *Provided*, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the first day of the calendar month next succeeding the date of the passage of this Act. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 21. [Repeal of prior Act.] That the Act entitled "An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," approved August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three), is hereby repealed, effective on and after the first day of the calendar month next succeeding the date of the passage of this act: *Provided*, That nothing in this Act shall be construed to affect any right or privilege accrued, any penalty or liability incurred, or any proceeding commenced under said act of August eighteenth, nineteen hundred and fourteen, or to diminish any authority conferred by said Act on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under the said Act, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said Act,

or to affect any right in respect to, or arising out of, any contract mentioned in section three of said Act, made on or subsequent to February eighteenth, nineteen hundred and fifteen, and prior to the first day of the calendar month next succeeding the date of the passage of this Act, but so far as concerns any such contract said Act of August eighteenth, nineteen hundred and fourteen, shall remain in force with the same effect as if this Act had not been passed. [39 Stat. L. 482.]

See the notes to section 1 of this Act, *supra*, p. 359.

For the Cotton Futures Act of Aug. 18, 1914, ch. 255, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 73; 4 Fed. Stat. Ann. (2d ed.) 277. See also the notes to section 1 of this Act, *supra*, p. 359.

SEC. 22. [Invalidity of part of Act—effect on balance.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 482.]

See the notes to section 1 of this Act, *supra*, p. 359.

XIV. STAMP TAXES

SEC. 800. [Instruments, etc., affected by title.] That on and after the first day of December, nineteen hundred and seventeen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person, corporation, partnership, or association who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. [—Stat. L. —]

The foregoing section 800 and the following sections 801–807 (including schedule A) constitute “Title VIII.—War Stamp Taxes” of the Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses and for other purposes.” General administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given in the following subdivision XV of this title, *infra*, p. 374.

SEC. 801. [Exemptions — government instruments.] That there shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power, when issued in the exercise of a strictly governmental, taxing, or municipal function; or stocks and bonds issued by cooperative building and loan associations which are

organized and operated exclusively for the benefit of their members and make loans only to their shareholders, or by mutual ditch or irrigating companies. [— *Stat. L.* —.]

See the note to the preceding section 800 of this Act.

SEC. 802. [Failure to pay tax — punishment.] That whoever—

(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid;

(b) Consigns or ships, or causes to be consigned or shipped, by parcel post any parcel, package, or article without the full amount of tax being duly paid;

(c) Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section eight hundred and four;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 803. [Fraudulently tampering with stamped instruments or used stamps — penalty.] That whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, in the discretion of the

court, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 804. [Cancellation of stamps.] That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person, corporation, partnership, or association, using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: *Provided*, That the Commissioner of Internal Revenue may prescribe such other method for the cancellation of such stamps as he may deem expedient. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 805. [Preparation and distribution of stamps — collection of stamp taxes omitted from instruments.] (a) That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the method provided in this title, as he may deem expedient.

(b) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this title by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of January, nineteen hundred and eighteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue.

(c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 806. [Distribution of stamps — increased bond by postmaster — disposition of receipts from sale.] That the Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 807. [Distribution of stamps — bond given by persons selling — regulations.] That the collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depositary of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

SCHEDULE A.—STAMP TAXES.

1. *Bonds of indebtedness:* Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

2. *Bonds, indemnity and surety:* Bonds for indemnifying any person, corporation, partnership, or corporation who shall have become bound or engaged as surety, and all bonds for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents: *Provided*, That where a premium is charged for the execution of such bond the tax shall be paid at the rate of one per centum on each dollar or fractional part thereof of the premium charged: *Provided further*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

3. *Capital stock, issue:* On each original issue, whether an organization or reorganization, of certificates of stock by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That where capital stock is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

4. *Capital stock, sales or transfers:* On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock or not, on

each \$100 of face value or fraction thereof, 2 cents, and where such shares of stock are without par value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of \$100 per share, in which case the tax shall be 2 cents on each \$100 of actual value or fraction thereof; *Provided*, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons who shall make any such sale, or who shall in pursuance of any such sale deliver any stock or evidence of the sale of any stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

5. *Produce, sales of, on exchange*: Upon each sale, agreement of sale, or agreement to sell, including so-called transferred or scratch sales, any products or merchandise at any exchange, or board of trade, or other similar place, for future delivery, for each \$100 in value of the merchandise covered by said sale or agreement of sale or agreement to sell, 2 cents, and for each additional \$100 or fractional part thereof in excess of \$100, 2 cents: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale: *Provided further*, That sellers of commodities described herein, having paid the tax provided by this subdivision, may transfer such contracts to a clearing house corporation or association, and such transfer shall not be deemed to be a sale, or agreement of sale, or an agreement to sell within the provisions of this Act, provided that such transfer shall not vest any beneficial interest in such clearing house association but shall be made for the sole purpose of enabling such clearing house association to adjust and balance the accounts of the members of said clearing house association on

their several contracts. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

That no bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of cash sales of products or merchandise for immediate or prompt delivery which in good faith are actually intended to be delivered shall be subject to this tax.

6. *Drafts or checks* payable otherwise than at sight or on demand, promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding \$100, 2 cents; and for each additional \$100 or fractional part thereof, 2 cents.

7. *Conveyance*: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof 50 cents: *Provided*, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

8. *Entry of any goods, wares, or merchandise at any custom-house*, either for consumption or warehousing, not exceeding \$100 in value, 25 cents; exceeding \$100 and not exceeding \$500 in value, 50 cents; exceeding \$500 in value, \$1.

9. *Entry for the withdrawal of any goods or merchandise from customs bonded warehouse*, 50 cents.

10. *Passage ticket*, one way or round trip, for each passenger, sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, or Mexico, if costing not exceeding \$30, \$1; costing more than \$30 and not exceeding \$60, \$3; costing more than \$60, \$5: *Provided*, That such passage tickets, costing \$10 or less, shall be exempt from taxation.

11. *Proxy* for voting at any election for officers, or meeting for the transaction of business of any incorporated company or association, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10 cents.

12. *Power of attorney* granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the

grantee, 25 cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States or from any State for pensions, back pay, bounty, or for property lost in the military or naval service or upon powers of attorney required in bankruptcy cases.

13. *Playing cards*: Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, after the passage of this Act, a tax of 5 cents per pack in addition to the tax imposed under existing law.

14. *Parcel-post packages*: Upon every parcel or package transported from one point in the United States to another by parcel post on which the postage amounts to 25 cents or more, a tax of 1 cent for each 25 cents or fractional part thereof charged for such transportation, to be paid by the consignor.

No such parcel or package shall be transported until a stamp or stamps representing the tax due shall have been affixed thereto. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 301. [Stamp taxes — notes secured by United States obligations.] That no stamp tax shall be required or imposed upon a promissory note secured by the pledge of bonds or obligations of the United States issued after April twenty-fourth, nineteen hundred and seventeen, or secured by the pledge of a promissory note which itself is secured by the pledge of such bonds or obligations: *Provided*, That in either case the par value of such bonds or obligations shall equal the amount of such note. [— *Stat. L.* —.]

This is from the Act of April 5, 1918, ch. —, creating the War Finance Corporation. The Act is set out under the title CORPORATIONS, *ante*, p. 107.

XV. ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

PART III.—GENERAL ADMINISTRATION PROVISIONS.

SEC. 15. [Definitions — “State” — “United States.”] That the word “State” or “United States” when used in this title shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions. [39 *Stat. L.* 773.]

The foregoing section 15 and the following sections 17-32, 409-412, 900-902 are a part of an Act of Sept. 8, 1916, ch. 463, entitled “An Act To increase the revenue, and for other purposes.”

This Act was divided as follows:

“Title I.—Income Tax.” Part I, on Individuals; Part II, on Corporations; these are given in subdivision VII of this title, *supra*, p. 312; Part III, consisting of the preceding section 15 and the following sections 17-32.

“Title II.—Estates Tax” given under subdivisiion VI of this title, *supra*, p. 305.

“Title III.—Munition Manufacturer’s Tax” given under subdivision X of this title, *supra*, p. 350.

"Title IV.—Miscellaneous Taxes" of which title sections 400–406 are given under subdivision IV of this title, *supra*, p. 287, sections 407, 408, are given under subdivision III of this title, *supra*, p. 282, sections 409–412 are given *infra*, p. 380, and 413 is given within subdivision I of this title, *supra*, p. 278.

"Title V.—Dyestuffs" given in CUSTOMS DUTIES, *ante*, p. 140.

"Title VI.—Printing Paper" given in CUSTOMS DUTIES, *ante*, p. 142.

"Title VII.—Tariff Commission" given in CUSTOMS DUTIES, *ante*, p. 145.

"Title VIII.—Unfair Competition" given in UNFAIR COMPETITION, *post*.

"Title IX" consisting of sections 900–902 given *infra*, p. 381.

SEC. 17. [Receipt for taxes.] That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes is made under the provisions of this title, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipt; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. [39 Stat. L. 773.]

See the note to the preceding section 15 of this Act.

SEC. 18. [Failure to make returns or pay tax.] That any person, corporation, partnership, association, or insurance company, liable to pay the tax, to make a return or to supply information required under this title, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be liable, except as otherwise specially provided in this title, to a penalty of not less than \$20 nor more than \$1,000. Any individual or any officer of any corporation, partnership, association, or insurance company, required by law to make, render, sign, or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: *Provided*, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any withholding agent required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such withholding agent whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment. [39 Stat. L. 775, as amended by — Stat. L. —.]

See the notes to section 15 of this Act, *supra*, p. 374.

This section was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1209. As originally enacted it was as follows:

"SEC. 18. That if any individual liable to make the return or pay the tax aforesaid shall refuse or neglect to make such return at the time or times hereinbefore specified in each year, he shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any individual or any officer of any corporation, joint-stock company or association, or insurance company required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: *Provided*, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any person or corporation required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such person or corporation whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment."

SEC. 19. [Verification of returns — amount of income understated — remedy.] The collector or deputy collector shall require every return to be verified by the oath of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such person may furnish sworn testimony to prove any relevant facts, and, if dissatisfied with the decision of the collector, may appeal to the Commissioner of Internal Revenue for his decision under such rules of procedure as may be prescribed by regulation. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 20. [Jurisdiction of courts — dispute as to amount of income.] That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this title to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 21. [Statistics — preparation and publication.] That the preparation and publication of statistics reasonably available with respect to the operation of the income tax law and containing classifications of taxpayers and of income, the amounts allowed as deductions and exemptions, and any other facts deemed pertinent and valuable, shall be made annually by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 22. Existing laws extended to provisions of this title.] That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title, are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 23. [Porto Rico and Philippine Islands — extension of provisions of title.] That the provisions of this title shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general Governments thereof, respectively: *Provided further*, That the jurisdiction in this title conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, That nothing in this title shall be held to exclude from the computation of the net income of the compensation paid any official by the governments of the District of Columbia, Porto Rico, and the Philippine Islands, or the political subdivisions thereof. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 24. [Repeal of prior Income Tax law.] That Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," is hereby repealed, except as herein otherwise provided, and except that it shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of such section or any provision thereof shall be available for the administration of this title or the corresponding provision thereof. [39 Stat. L. 776.]

See the notes to section 15 of this Act, *supra*, p. 374.

For the Act of Oct. 3, 1913, ch. 16, § 2, repealed by this section, see 1914 Supp. Fed. Stat. Ann. 185; 4 Fed. Stat. Ann. (2d ed.) 236.

SEC. 25. ["Income" within meaning of title.] That income on which has been assessed the tax imposed by Section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, shall not be considered as income within the meaning of this title: *Provided*, That this section shall not conflict with that portion of section ten, of this title, under which a taxpayer has fixed its own fiscal year.

See the notes to section 15 of this Act, *supra*, p. 374.

As to the Act mentioned in this section, see the note to the preceding section 24 of this Act.

SEC. 26. [Returns of dividends.] Every corporation, joint-stock company or association, or insurance company subject to the tax herein imposed, when required by the Commissioner of Internal Revenue, shall render a correct return, duly verified under oath, of its payments of dividends, whether made in cash or its equivalent or in stock, including the names and addresses of stockholders and the number of shares owned by

each, and the tax years and the applicable amounts in which such dividends were earned, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. [39 Stat. L. 1004, as amended by — Stat. L.—]

See the notes to section 15 of this Act, *supra*, p. 374.

This section was added to this Act as a new section by the Act of March 3, 1917, ch. 159, § 402, and was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1210. As originally enacted it was as follows:

"SEC. 26. Every corporation, joint-stock company or association, or insurance company subject to the tax herein imposed, when required by the Commissioner of Internal Revenue, shall render a correct return, duly verified under oath, of its payments of dividends, whether made in cash or its equivalent or in stock, including the names and addresses of stockholders and the number of shares owned by each, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

SEC. 27. [Returns by brokers.] That every person, corporation, partnership, or association, doing business as a broker on any exchange or board of trade or other similar place of business shall, when required by the Commissioner of Internal Revenue, render a correct return duly verified under oath, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, showing the names of customers for whom such person, corporation, partnership, or association has transacted any business, with such details as to the profits, losses, or other information which the commissioner may require, as to each of such customers, as will enable the Commissioner of Internal Revenue to determine whether all income tax due on profits or gains of such customers has been paid. [— Stat. L. —]

See the notes to section 15 of this Act, *supra*, p. 374.

The foregoing section 27 and the following sections 28-32 were added to this Part III of this Act as new sections by the Act of Oct. 3, 1917, ch. —, title XII, § 1211.

SEC. 28. [Returns by persons, etc., paying interest, rent, salaries, wages, etc.] That all persons, corporations, partnerships, associations and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employers, making payment to another person, corporation, partnership, association, or insurance company, of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in sections twenty-six and twenty-seven), of \$800 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, are hereby authorized and required to render a true and accurate return to the Commissioner of Internal Revenue, under such rules and regulations and in such form and manner as may be prescribed by him, with the approval of the Secretary of the Treasury, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment: *Provided*, That such returns shall be required, regardless of amounts, in the case of payments of interest upon

bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, and in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest from the bonds and dividends from the stock of foreign corporations by persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person, corporation, partnership, association, or insurance company paying the income.

The provisions of this section shall apply to the calendar year nineteen hundred and seventeen and each calendar year thereafter, but shall not apply to the payment of interest on obligations of the United States. [—*Stat. L.* —.]

See the notes to section 15 of this Act, *supra*, p. 374, and the preceding section 27 of this Act.

SEC. 29. [Crediting net income with amount of excess profits tax.] That in assessing income tax the net income embraced in the return shall also be credited with the amount of any excess profits tax imposed by Act of Congress and assessed for the same calendar or fiscal year upon the taxpayer, and, in the case of a member of a partnership, with his proportionate share of such excess profits tax imposed upon the partnership. [—*Stat. L.* —.]

See the notes to sections 15 and 27 of this Act, *supra*, p. 374.

SEC. 30. [Incomes of foreign governments not taxed.] That nothing in section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," or in this title, shall be construed as taxing the income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to foreign governments. [—*Stat. L.* —.]

See the notes to sections 15 and 27 of this Act, *supra*, p. 374.

For the Act of Oct. 3, 1913, ch. 16, § 2, mentioned in the text (which was repealed by section 24 of this Act, *supra*, p. 377), see 1914 Supp. Fed. Stat. Ann. 185; 4 Fed. Stat. Ann. (2d ed.) 236.

SEC. 31. (a) ["Dividends" defined.] That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of the earnings or profits so distributed.

(b) Any distribution made to the shareholders or members of a corporation, joint-stock company, or association, or insurance company, in the year nineteen hundred and seventeen, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated by the corporation, joint-stock company, association, or insurance company, but nothing herein shall be construed as taxing any earnings or profits accrued prior to March first, nineteen hundred and thirteen, but such earnings or profits may be distributed in stock dividends or otherwise, exempt from the tax, after the distribution of earnings and profits accrued since March first, nineteen hundred and thirteen, has been made. This subdivision shall not apply to any distribution made prior to August sixth, nineteen hundred and seventeen, out of earnings or profits accrued prior to March first, nineteen hundred and thirteen. [—*Stat. L.*—.]

See the notes to sections 15 and 27 of this Act, *supra*, pp. 374, 378.

SEC. 32. [Life insurance premiums — deduction.] That premiums paid on life insurance policies covering the lives of officers, employees, or those financially interested in any trade or business conducted by an individual, partnership, corporation, joint-stock company or association, or insurance company, shall not be deducted in computing the net income of such individual, corporation, joint-stock company or association, or insurance company, or in computing the profits of such partnership for the purposes of subdivision (e) of section nine. [—*Stat. L.*—.]

See the notes to sections 15 and 27 of this Act, *supra*, pp. 374, 378.

SEC. 409. [Existing laws applicable to title.] That all administrative or special provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title, and every person, firm, company, corporation, or association liable to any tax imposed by this title, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. [39 *Stat. L.* 792.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 410. [Certain Acts, etc., repealed.] That the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," are hereby repealed, except sections three and four of such Act as so extended, which sections shall remain in force till January first, nineteen hundred and seventeen, and except that the provisions of the said Act shall remain in force for the assessment and

collection of all special taxes imposed by sections three and four thereof, or by such sections as extended by said joint resolution, for any year or part thereof ending prior to January first, nineteen hundred and seventeen, and of all other taxes imposed by such Act, or by such Act as so extended, accrued prior to the taking effect of this title, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes. [39 Stat. L. 792.]

See the notes to section 15 of this Act, *supra*, p. 374.

For the Act of Oct. 22, 1914, ch. 331, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 135, and the references in the notes to the first section thereof.

For the Res. of Dec. 17, 1917, No. 2, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

SEC. 411. [Redemption of stamps.] That the Commissioner of Internal Revenue, subject to regulation prescribed by the Secretary of the Treasury, may make allowance for or redeem stamps, issued, under authority of the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," to denote the payment of internal revenue tax, and which have not been used, if presented within two years after the purchase of such stamps. [39 Stat. L. 793.]

See the notes to section 15 of this Act, *supra*, p. 374.

For a reference to the Acts mentioned in this section, see the notes to the preceding section 410 of this Act.

Similar provisions, with a different time limit, were made by the Act of April 17, 1917, ch. —, § 1, *infra*, p. 382.

SEC. 412. [Time of taking effect of provisions of title.] That the provisions of this title shall take effect on the day following the passage of this Act, except where otherwise in this title provided. [39 Stat. L. 793.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 900. [Invalidity of part of Act — effect on remainder.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 800.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 901. [Amendment of certain existing Act.] The Act approved August twenty-ninth, nineteen hundred and sixteen, being an Act making appropriations for the support of the Army for the fiscal year ending

June thirtieth, nineteen hundred and seventeen, and for other purposes, is hereby amended as follows:

“The sum of \$2,000,000, therein appropriated to be expended under the direction of the Secretary of War for the support of the family of each enlisted man of the Organized Militia or National Guard, or of the Regular Army, as therein provided, shall be available to be paid on the basis of and for time subsequent to June eighteenth, nineteen hundred and sixteen, the date of the call by the President, and the time for which such payment shall be made shall correspond with the time of service of the enlisted men, and payment shall be made without reference to the enlisted man having enlisted before or after the call by the President.” [39 Stat. L. 801.]

See the notes to section 15 of this Act, *supra*, p. 374.

The provisions of the Act of Aug. 29, 1916, ch. 418, § 1, amended by this section are given in 6 Fed. Stat. Ann. (2d ed.) 451, and this section is set out on the following page 452 of that volume.

SEC. 902. [Time of taking effect of Act.] That unless otherwise herein specially provided, this Act shall take effect on the day following its passage, and all provisions of any Act or Acts inconsistent with the provisions of this Act are hereby repealed. [39 Stat. L. 801.]

See the notes to section 15 of this Act, *supra*, p. 374.

[SEC. 1.] [Redemption of stamps.] * * * The Commissioner of Internal Revenue, subject to regulation prescribed by the Secretary of the Treasury, may make allowance for or redeem stamps, issued under authority of the Act approved October twenty-second, nineteen hundred and fourteen, entitled “An Act to increase the internal revenue, and for other purposes,” and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled “Joint resolution extending the provisions of the Act entitled ‘An Act to increase the internal revenue, and for other purposes,’ approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen,” to denote the payment of internal revenue tax, and which have not been used, if presented prior to January first, nineteen hundred and eighteen. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

For the Act of Oct. 22, 1914, ch. 331, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 284.

For the Res. of Dec. 17, 1915, No. 2, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

Similar provisions with a different time limit were made by the Act of Sept. 8, 1916, ch. 463, § 411, *supra*, p. 381.

SEC. 1000. [Imports from and exports to Virgin Islands — amount of tax.] That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the West Indian Islands acquired from Denmark, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such

articles shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of said islands: *Provided*, That there shall be levied, collected, and paid in said islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in said islands upon like articles there manufactured; and such articles going into said islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States. [— *Stat. L.* —.]

The foregoing section 1000 and the following sections 1001-1009 are a part of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes." This Act consisted of thirteen titles, as follows:

"Title I.—War Income Tax" given under subdivision VII of this title, *supra*, p. 312.

"Title II.—War Excess Profits Tax" given under subdivision IX of this title, *supra*, p. 341.

"Title III.—War Tax on Beverages" given under subdivision IV of this title, *supra*, p. 286.

"Title IV.—War Tax on Cigars, Tobacco, and Manufacturers Thereof" given under subdivision V of this title, *supra*, p. 303.

"Title V.—War Tax on Facilities Furnished by Public Utilities and Insurance" given under subdivision XII of this title, *supra*, p. 355.

"Title VI.—War Excise Tax" given under subdivision VIII of this title, *supra*, p. 273.

"Title VII.—War Tax on Admissions and Dues" given under subdivision XI of this title, *supra*, p. 354.

"Title VIII.—War Stamp Taxes" given under subdivision XIV of this title, *supra*, p. 368.

"Title IX.—War Estate Tax" given under subdivision VI of this title, *supra*, p. 305.

"Title X.—Administrative Provisions" consisting of the foregoing section 1000 and the following sections 1001-1009.

"Title XI.—Postal Rates" given under *POSTAL SERVICE*, *post*.

"Title XII.—Income Tax Amendments" consisting of sections 1200-1212, all of which except the last section which is given *supra*, p. 336, constituted amendments to various sections of the Act of Sept. 8, 1916, ch. 463, and are incorporated therein as set out within this title.

"Title XIII.—General Provisions" consisting of sections 1300-1302 which are set out, *infra*, p. 386.

SEC. 1001. [Certain laws made part of Act—records and returns.] That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, corporation, partnership, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. [— *Stat. L.* —.]

See the notes to the preceding section 1000 of this Act.

SEC. 1002. [Taxes imposed by existing law paid—effect of additional taxes by this Act—extension of time for payment.] That where additional taxes are imposed by this Act upon articles or commodities, upon which the tax imposed by existing law has been paid, the person, corporation, partnership, or association required by this Act to pay the tax shall, within thirty days after its passage, make return under oath in such form and under such regulations as the Commissioner of Internal Revenue with

the approval of the Secretary of the Treasury shall prescribe. Payment of the tax shown to be due may be extended to a date not exceeding seven months from the passage of this Act, upon the filing of a bond for payment in such form and amount and with such sureties as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1003. [Method of collecting taxes — administrative and penalty provisions of Title VIII when applicable.] That in all cases where the method of collecting the tax imposed by this Act is not specifically provided, the tax shall be collected in such manner as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe. All administrative and penalty provisions of Title VIII of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner of Internal Revenue determines or prescribes shall be paid by stamp. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

"Title VII.—War Stamp Taxes," mentioned in this section, is given within subdivision XIV of this title, *supra*, p. 368.

SEC. 1004. [Failure to make or fraudulent return — evasion of tax — failure to collect on account — penalties.] That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than \$1,000, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded, or not collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected, in any case in which the punishment is not otherwise specifically provided. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1005. [Rules and regulations for enforcement of Act.] That the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1006. [Stamps on hand under previous law — use.] That where the rate of tax imposed by this Act, payable by stamps, is an increase over previously existing rates, stamps on hand in the collectors' offices and in the Bureau of Internal Revenue may continue to be used until the supply on hand is exhausted, but shall be sold and accounted for at the rates provided by this Act, and assessment shall be made against manufacturers and other taxpayers having such stamps on hand on the day this Act takes

effect for the difference between the amount paid for such stamps and the tax due at the rate provided by this act. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1007. [Existing executory contracts relating to articles taxed under this Act — payment of tax.] That (a) if any person, corporation, partnership, or association has prior to May ninth, nineteen hundred and seventeen, made a bona fide contract with a dealer for the sale, after the tax takes effect, of any article (or, in the case of moving picture films, such a contract with a dealer, exchange, or exhibitor, for the sale or lease thereof) upon which a tax is imposed under Title III, IV, or VI, or under subdivision thirteen of Schedule A of Title VIII, or under this section, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price.

The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section five hundred and three.

The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1008. [Disregarding fractional part of cent in payment of tax.] That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1009. [Payment in advance and in installments.] That the Secretary of the Treasury, under rules and regulations prescribed by him, shall permit taxpayers liable to income and excess profits taxes to make payments in advance in installments or in whole of an amount not in excess of the estimated taxes which will be due from them, and upon determination of the taxes actually due any amount paid in excess shall be refunded as taxes erroneously collected: *Provided*, That when payment is made in installments at least one-fourth of such estimated tax shall be paid before the expiration of thirty days after the close of the taxable year, at least an additional one-fourth within two months after the close of the taxable year, at least an additional one-fourth within four months after the close of the taxable year, and the remainder of the tax due on or before the time now fixed by law for such payment: *Provided further*, That the Secretary of the Treasury, under rules and regulations prescribed by him, may allow credit against such taxes so paid in advance of an amount not exceeding three per centum per annum calculated upon the amount so paid from the date of such payment to the date now fixed by law for such payment; but no such credit shall be allowed on payments in excess of taxes determined

to be due, nor on payments made after the expiration of four and one-half months after the close of the taxable year. All penalties provided by existing law for failure to pay tax when due are hereby made applicable to any failure to pay the tax at the time or times required in this section. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1010. [Certificate of indebtedness received in payment of taxes — uncertified checks.] That under rules and regulations prescribed by the Secretary of the Treasury, collectors of internal revenue may receive, at par and accrued interest, certificates of indebtedness issued under section six of the Act entitled “An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes,” approved April twenty-fourth, nineteen hundred and seventeen, and any subsequent Act or Acts; and uncertified checks in payment of income and excess profits taxes, during such time and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

For the Act of April 24, 1917, ch. —, § 6, mentioned in this section, see **PUBLIC DEBT, *post***.

SEC. 1300. [Invalidity of part of Act — effect on remainder.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1301. [Provisions in former Act relating to special preparedness fund — repeal.] That Title I of the Act entitled “An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extension of fortifications, and for other purposes,” approved March third, nineteen hundred and seventeen, be and the same is hereby repealed. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

The provisions repealed by this section are those of the Act of March 3, 1917, ch. 159, title I, 39 Stat. L. 1000.

SEC. 1302. [When Act effective.] That unless otherwise herein specially provided, this Act shall take effect on the day following its passage. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

INTERSTATE COMMERCE

Act of Aug. 9, 1916, ch. 301, 387.

Initial Carrier of Goods — Limitation of Liability for Loss — Interstate Commerce Act, sec. 20, Amended, 387.

Act of Aug. 29, 1916, ch. 417, 388.

Transportation of Troops and Material of War — Precedence Given — Interstate Commerce Act, sec. 6, Amended, 388.

Act of May 29, 1917, ch. —, 389.

"Car Service" — Meaning of Term — Rules and Regulations — Promulgation — Suspension by Commission — Interstate Commerce Act, sec. 1, Amended, 389.

Act of Aug. 9, 1917, ch. —, 390.

Sec. 1. Membership of Commission — Salary — Term of Office — Interstate Commerce Act, sec. 24, Amended, 390.

2. Proceedings of Commission — Conduct — Seal, Oaths and Subpoenas — Quorum — Divisions — Salary of Secretary — Interstate Commerce Act, sec. 17, Amended, 390.

3. Salary of Secretary — Interstate Commerce Act, sec. 18, in Part Repealed, 392.

4. New Rates, Classifications, etc. — Filing — Interstate Commerce Act, sec. 15, par. 2, Amended, 392.

Act of Aug. 10, 1917, ch. —, 392.

Obstruction of Interstate or Foreign Commerce During War — Penalty — Use of Armed Forces by President — Preference as to Shipments — Interstate Commerce Act, sec. 1, Amended, 392.

CROSS-REFERENCE

See *BILLS OF LADING*

An Act To amend an Act entitled "An Act to amend an Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' " approved March fourth, nineteen hundred and fifteen.

[*Act of Aug. 9, 1916, ch. 301, 39 Stat. L. 441.*]

[Initial carrier of goods — limitation of liability for loss — Interstate Commerce Act, sec. 20 amended.] That so much of an Act to amend an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved March fourth, nineteen hundred and fifteen, as reads as follows, to wit:

"*Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce

Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules,"

be, and the same is hereby, amended to read as follows, to wit:

"*Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses." [39 Stat. L. 441.]

For the Act of March 4, 1915, ch. 176, hereby amended, see 1916 Supp. Fed. Stat. Ann. 124. This Act, incorporated in the Act of which it was amendatory, is given as section 20K in 4 Fed. Stat. Ann. (2d ed.) 506.

[Transportation of troops and material of war — precedence given — Interstate Commerce Act, sec. 6 amended.] * * * Section six of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended March second, eighteen hundred and eighty-nine, and June twenty-ninth, nineteen hundred and six, which reads:

"That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic,"

be amended to read as follows:

"That in time of war or threatened war preference and precedence shall upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers

shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned." [339 Stat. L. 604.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

For the Act of Feb. 4, 1887, ch. 104, § 6, as amended by the Act of June 29, 1906, ch. 3591, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 260; 4 Fed. Stat. Ann. (2d ed.) 406.

An Act To amend an Act entitled "An Act to regulate commerce," as amended, in respect of car service, and for other purposes.

[Act of May 29, 1917, ch. —, — Stat. L. —.]

[**"Car service"**—meaning of term—rules and regulations—promulgation—suspension by commission—Interstate Commerce Act, sec. 1 amended.] That section one of the Act entitled "An Act to regulate commerce," approved February twenty-fourth, eighteen hundred and eighty-seven, as heretofore amended, is further amended by adding thereto the following:

The term "car service" as used in this Act shall include the movement, distribution, exchange, interchange, and return of cars used in the transportation of property by any carrier subject to the provisions of this Act.

It shall be the duty of every such carrier to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service, and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.*

The Interstate Commerce Commission is hereby authorized by general or special orders to require all carriers subject to the provisions of the Act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the commission may, in its discretion, direct that the said rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation and be subject to any or all of the provisions of the Act relating thereto.

The commission shall, after hearing, on the complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier and the penalties or other sanctions for nonobservance of such rules.

Whenever the commission shall be of opinion that necessity exists for immediate action with respect to the supply or use of cars for transportation of property, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the commission may determine, to suspend the operation of any or all rules, regulations, or practices then established

with respect to car service for such time as may be determined by the commission, and also authority to make such just and reasonable directions with respect to car service during such time as in its opinion will best promote car service in the interest of the public and the commerce of the people.

The directions of the commission as to car service may be made through and by such agents or agencies as the commission shall designate and appoint for that purpose.

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with any direction or order with respect to car service, such carrier, receiver, or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States. [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 1, as originally enacted, see 3 Fed. Stat. Ann. 809; and as subsequently amended, see 4 Fed. Stat. Ann. (2d ed.) 337.

An Act To amend the Act to regulate commerce, as amended, and for other purposes.

[*Act of August 9, 1917, ch. —, — Stat. L. —.*]

[SEC. 1.] [Membership of Commission—salary—term of office—Interstate Commerce Act, sec. 24 amended.] That section twenty-four of an Act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, as amended, be further amended to read as follows:

“SEC. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of nine members, with terms of seven years, and each shall receive \$10,000 compensation annually. The qualifications of the members and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and twenty-one, and one for a term expiring December thirty-first, nineteen hundred and twenty-two. The terms of the present commissioners or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Not more than five commissioners shall be appointed from the same political party.” [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 24, as originally enacted, see 3 Fed. Stat. Ann. 852; and as subsequently amended, see 4 Fed. Stat. Ann. (2d ed.) 544.

SEC. 2. [Proceedings of Commission—conduct—seal, oaths and subpoenas—quorum—divisions—salary of secretary—Interstate Com-

merce Act, sec. 17 amended.] That section seventeen of said Act, as amended, be further amended to read as follows:

“ SEC. 17. That the commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The commission shall have an official seal, which shall be judicially noticed. Any member of the commission may administer oaths and affirmations and sign subpoenas. A majority of the commission shall constitute a quorum for the transaction of business, except as may be otherwise herein provided, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. The commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division of the commission, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the commission or any division thereof and be heard in person or by attorney. Every vote and official act of the commission, or of any division thereof, shall be entered of record, and its proceedings shall be public upon the request of any party interested.

“ The commission is hereby authorized by its order to divide the members thereof into as many divisions as it may deem necessary, which may be changed from time to time. Such divisions shall be denominated, respectively, division one, division two, and so forth. Any commissioner may be assigned to and may serve upon such division or divisions as the commission may direct, and the senior in service of the commissioners constituting any of said divisions shall act as chairman thereof. In case of vacancy in any division, or of absence or inability to serve thereon of any commissioner thereto assigned, the chairman of the commission, or any commissioner designated by him for that purpose, may temporarily serve on said division until the commission shall otherwise order.

“ The commission may by order direct that any of its work, business, or functions arising under this Act, or under any Act amendatory thereof, or supplemental thereto, or under any amendment which may be made to any of said Acts, or under any other Act or joint resolution which has been or may hereafter be approved, or in respect of any matter which has been or may be referred to the commission by Congress or by either branch thereof, be assigned or referred to any of said divisions for action thereon, and may by order at any time amend, modify, supplement, or rescind any such direction. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the commission.

“ In conformity with the subject to the order or orders of the commission in the premises, each division so constituted shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions so assigned or referred to it for action by the Commission, and in respect thereof the division shall have all the jurisdiction and powers now or then conferred by law upon the commission, and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by any of said divisions in respect of any matters so assigned or referred to it shall have the same force and effect, and may be made, evidenced, and

enforced in the same manner as if made, or taken by the commission, subject to rehearing by the commission, as provided in section sixteen-a hereof for rehearing cases decided by the commission. The secretary and seal of the commission shall be the secretary and seal of each division thereof.

“In all proceedings before any such divisions relating to the reasonableness of rates or to alleged discriminations not less than three members shall participate in the consideration and decision; and in all proceedings relating to the valuation of railway property under the Act entitled ‘An Act to amend an Act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities,’ approved March first, nineteen hundred and thirteen, not less than five members shall participate in the consideration and decision.

“The salary of the secretary of the commission shall be \$5,000 per annum.

“Nothing in this section contained, or done pursuant thereto, shall be deemed to divest the commission of any of its powers.” [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 17, amended by this section, see 3 Fed. Stat. Ann. 849; 4 Fed. Stat. Ann. (2d ed.) 493.

For the Act of March 1, 1913, ch. 92, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 204. This Act has been incorporated in the Act of which it was amendatory as section 19a, and is given in 4 Fed. Stat. Ann. (2d ed.) 495.

SEC. 3. [Salary of secretary — Interstate Commerce Act, sec. 18, in part repealed.] So much of section eighteen of the Act to regulate commerce as fixes the salary of the secretary of the commission is hereby repealed. [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 18, in part repealed by this section, see 3 Fed. Stat. Ann. 849; 4 Fed. Stat. Ann. (2d ed.) 494.

SEC. 4. [New rates, classifications, etc.— filing — Interstate Commerce Act, sec. 15, par. 2, amended.] That paragraph two, section fifteen, of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, as amended, be further amended by adding the following: “*Provided further*, until January first, nineteen hundred and twenty, no increased rate, fare, charge, or classification shall be filed except after approval thereof has been secured from the commission. Such approval may, in the discretion of the commission, be given without formal hearing, and in such case shall not affect any subsequent proceeding relative to such rate, fare, charge, or classification.” [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 15, par. 2, see 1912 Supp. Fed. Stat. Ann. 120; 4 Fed. Stat. Ann. (2d ed.) 468.

An Act To amend the Act to regulate commerce, as amended, and for other purposes.

[Act of August 10, 1917, ch —, —*Stat. L.* —.]

[Obstruction of interstate or foreign commerce during war — penalty — use of armed forces by President — preference as to shipments

—**Interstate Commerce Act, sec. 1, amended.]** That section one of the act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, be further amended by adding thereto the following:

“That on and after the approval of this Act any person or persons who shall, during the war in which the United States is now engaged, knowingly and willfully, by physical force or intimidation by threats of physical force obstruct or retard, or aid in obstructing or retarding, the orderly conduct or movement in the United States of interstate or foreign commerce, or the orderly make-up or movement or disposition of any train, or the movement or disposition of any locomotive, car, or other vehicle on any railroad or elsewhere in the United States engaged in interstate or foreign commerce shall be deemed guilty of a misdemeanor, and for each offense shall be punishable by a fine of not exceeding \$100 or by imprisonment for not exceeding six months, or by both such fine and imprisonment; and the President of the United States is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of the passage of the mail, or of the orderly conduct or movement of interstate or foreign commerce in any part of the United States, or of any train, locomotive, car, or other vehicle upon any railroad or elsewhere in the United States engaged in interstate or foreign commerce: *Provided*, That nothing in this action shall be construed to repeal, modify, or affect either section six or section twenty of an Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,’ approved October fifteenth, nineteen hundred and fourteen.

“That during the continuance of the war in which the United States is now engaged the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as, in his judgment, may be essential to the national defense and security shall have preference or priority in transportation by any common carrier by railroad, water, or otherwise. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them, and for any such purpose he is hereby authorized to issue orders direct, or through such person or persons as he may designate for the purpose or through the Interstate Commerce Commission. Officials of the United States, when so designated, shall receive no compensation for their services rendered hereunder. Persons not in the employ of the United States so designated shall receive such compensation as the President may fix. Suitable offices may be rented and all necessary expenses, including compensation of persons so designated, shall be paid as directed by the President out of funds which may have been or may be provided to meet expenditures for the national security and defense. The common carriers subject to the Act to regulate commerce or as many of them as desire so to do are hereby authorized without responsibility or liability on the part of the United States, financial or otherwise, to establish and maintain in the city of Washington during the period of the war an agency empowered by such carriers as join in the arrangement to receive on behalf of them all notice and service of such orders and directions as may be issued in accordance with this Act, and service upon such agency shall be

good service as to all the carriers joining in the establishment thereof. And it shall be the duty of any and all the officers, agents, or employees of such carriers by railroad or water or otherwise to obey strictly and conform promptly to such orders, and failure knowingly and willfully to comply therewith, or to do or perform whatever is necessary to the prompt execution of such order, shall render such officers, agents, or employees guilty of a misdemeanor, and any such officer, agent or employee shall upon conviction, be fined not more than \$5,000, or imprisoned not more than one year, or both, in the discretion of the court. For the transportation of persons or property in carrying out the order and directions of the President, just and reasonable rates shall be fixed by the Interstate Commerce Commission; and if the transportation be for the Government of the United States, it shall be paid for currently or monthly by the Secretary of the Treasury out of any funds not otherwise appropriated. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal pains, penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction." [—*Stat. L.*—]

For the Act of Feb. 4, 1887, ch. 104, § 1, see 3 Fed. Stat. Ann. 809; 4 Fed. Stat. Ann. (2d ed.) 337.

For the Act of Oct. 15, 1914, ch. 323, mentioned in this Act, see 1916 Supp. Fed. Stat. Ann. 267, 9 Fed. Stat. Ann. (2d ed.) 730.

INTOXICATING LIQUORS

Act of March 3, 1917, ch. 162, 394.

Sec. 5. Liquor Advertisements — Prohibition in Mail — Interstate Shipments of Liquors — Dry Territory, 394.

Act of Oct. 3, 1917, ch. —, 396.

Sec. 1110. Liquor Advertisements — Prohibition in Mail — Interstate Shipments of Liquor — Dry Territory — Construction of Former Act, 396.

CROSS-REFERENCES

Sale Prohibited in Alaska, see ALASKA.

Importation Prohibited, see FOOD AND FUEL; INTERNAL REVENUE.

Sale Prohibited in Hawaii, see HAWAIIAN ISLANDS.

Sale Prohibited in Indian Country, see INDIANS.

Exportation, see INTERNAL REVENUE.

Tax on, see INTERNAL REVENUE.

Sale to Officers and Men of Navy Prohibited, see NAVY.

Sale Prohibited in Porto Rico, see PORTO RICO.

Sale to Officers and Men of Army Prohibited, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 5. [Liquor advertisements — prohibition in mail — interstate shipments of liquors — dry territory.] That no letter, postal card, circular, newspaper, pamphlet, or publication of any kind containing any advertise-

ment of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order or orders for said liquors, or any of them, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier, when addressed or directed to any person, firm, corporation, or association, or other addressee, at any place or point in any State or Territory of the United States at which it is by the law in force in the State or Territory at that time unlawful to advertise or solicit orders for such liquors, or any of them, respectively.

If the publisher of any newspaper or other publication or the agent of such publisher, or if any dealer in such liquors or his agent, shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than \$1,000 or imprisoned not more than six months, or both; and for any subsequent offense shall be imprisoned not more than one year. Any person violating any provision of this section may be tried and punished, either in the district in which the unlawful matter or publication was mailed or to which it was carried by mail for delivery, according to direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: *Provided*, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State: *Provided further*, That the Postmaster General is hereby authorized and directed to make public from time to time in suitable bulletins or public notices the names of States in which it is unlawful to advertise or solicit orders for such liquors. [39 Stat. L. 1069.]

This is from the Postal Service Appropriation Act of March 3, 1917, ch. 162, and is known as the "Reed Amendment."

By a joint resolution of March 4, 1917, ch. 192, 39 Stat. L. 1202, it was provided that the provisions of this section should not be in effect until July 1, 1917.

This section was construed by the Act of Oct. 3, 1917, ch. —, § 1110, given in the following paragraph of the text.

Interstate carriers are affected by this act and violate its provisions if they ship intoxicating liquors into a state for the personal use of the consignee provided a law of the state prohibits the personal use of liquors therein. *McAdams v. Wells, Fargo & Co.*, 249 Fed. 175.

"Commerce" as used in this paragraph is not synonymous with "transportation" and where an owner transports his own liquor personally from one state to another, not for purposes of trade, he is not engaging in commerce and the statute does not apply. *U. S. v. Mitchell*, 245 Fed. 601.

"Cause . . . to be transported."—In *Ex p. Westbrook*, 250 Fed. 636, the petitioners were before the court on writs of habeas corpus and the court said:

"This case is to be decided upon the following facts appearing from the evidence before the commissioner: Liquor was procured from a dealer in Jacksonville, loaded into an automobile, and started on its way to Albany, Ga., the automobile being driven by one of the defendants: the other residing with him and admitting the ownership of the liquor to be in his father. After having proceeded about a mile and a half, the arrest was made. The petitioners claim that here was an attempt only, and not the consummated crime charged in the affidavit. The government claims that it was a consummated violation of the Reed and Jones amendment to the Post Office Appropriation Bill of 1917. . . . This act seems to punish whoever shall 'order'

intoxicating liquors to be transported in interstate commerce, or whoever shall 'purchase' such liquors for that purpose, or whoever shall 'cause' such liquors to be so transported. Now, if transportation by automobile from one state to another is in interstate commerce, and this seems to be the law, then the testimony before the commissioner was sufficient to

hold the defendants on one, if not all, the prohibitions contained in the act. If they did not order or purchase, they were causing the transportation of the liquor at the time of their arrest. This matter was before the commissioner, who is only required to find probable cause from the evidence, and I think the evidence fully sustains this finding."

SEC. 1110. [Liquor advertisements — prohibition in mail — interstate shipments of liquor — dry territory — construction of former Act.] That section five of the Act approved March third, nineteen hundred and seventeen, entitled "An Act making appropriations for the Post Office Department for the year ending June thirtieth, nineteen hundred and eighteen," shall not be construed to apply to ethyl alcohol for governmental, scientific, medicinal, mechanical, manufacturing, and industrial purposes, and the Postmaster General shall prescribe suitable rules and regulations to carry into effect this section in connection with the Act of which it is amendatory, nor shall said section be held to prohibit the use of the mails by regularly ordained ministers of religion, or by officers of regularly established churches, for ordering wines for sacramental uses, or by manufacturers and dealers for quoting and billing such wines for such purposes only. [— *Stat. L.* —.]

This is from the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes."

The Act of March 3, 1917, ch. 162, § 5, construed by this section, is given in the preceding paragraph of the text.

IRRIGATION

See **WATERS**

JUDGMENTS

Act of Aug. 23, 1916, ch. 397, 396.

Sec. 1. Docketing in State Court — Repeal of Statute, 396.

2. Act When Effective, 397.

An Act To repeal an Act approved March second, eighteen hundred and ninety-five, entitled "An Act to amend section three of An Act entitled 'An Act to regulate the liens of judgments and decrees of the courts of the United States,' approved August first, eighteen hundred and eighty-eight."

[*Act of Aug. 23, 1916, ch. 397, 39 Stat. L. 531.*]

SEC. 1. [Docketing in state court — repeal of statute.] That an Act approved March second, eighteen hundred and ninety-five, entitled "An

Act to amend section three of an Act entitled 'An Act to regulate the liens of judgments and decrees of the courts of the United States,' approved August first, eighteen hundred and eighty-eight," be, and the same is hereby, repealed. [39 Stat. L. 531.]

For the Act of March 2, 1895, ch. 180, 28 Stat. L. 814, repealed by the text, see 4 Fed. Stat. Ann. 6; 4 Fed. Stat. Ann. (2d ed.) 608 note.

SEC. 2. [Act when effective.] That this Act shall take effect on and after January first, nineteen hundred and seventeen. [39 Stat. L. 531.]

JUDICIAL DISTRICTS

See JUDICIARY

JUDICIAL OFFICERS

Act of June 12, 1917, ch. —, 397.

Sec. 1. Compensation and Fees — Clerks of District Courts — Marshals, 397.

Act of April 15, 1918, ch. —, 397.

United States Court for China — Expenses of Court and District Attorney, 397.

Act of June 13, 1918, ch. —, 398.

Marshal for Western District of Michigan — Salary, 398.

Act of July 1, 1918, ch. —, 398.

Sec. 1. Marshals and Deputy Marshals — Per Diem, 398.

Assistant District Attorneys — Compensation, 398.

Clerks of Courts — Renewal of Bonds, 398.

Criers — Attendance of Juries — Vacation, 398.

CROSS-REFERENCE

Issuance of Search Warrants, see CRIMINAL LAW.

SEC. 1. [Compensation and fees — clerks of district courts — marshals.] * * * That for the calendar year nineteen hundred and seventeen, and thereafter, the maximum personal compensation of clerks of the United States district courts shall in no case exceed \$3,500 per annum, and that single fees only shall be charged by United States marshals and clerks of the United States district courts against the United States and against private litigants in every judicial district. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[United States court for China — expenses of court and district attorney.] * * * The judge of the said court and the district attorney shall, when the sessions of the court are held at other cities than Shanghai,

receive in addition to their salaries their necessary actual expenses during such sessions, not to exceed \$5 per day each, and so much as may be necessary for said purposes during the fiscal year ending June thirtieth, nineteen hundred and nineteen, is hereby appropriated. [— *Stat. L.* —.]

This is from the Diplomatic and Consular Service Appropriation Act of April 15, 1918, ch. —, following an appropriation for the United States Court for China. Similar provisions have appeared in like Acts for preceding years.

An Act To increase the salary of the United States marshal for the western district of Michigan.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[**Marshal for western district of Michigan — salary.**] That from and after the passage of this Act the salary of the United States marshal for the western district of Michigan shall be at the rate of \$4,000 a year. [— *Stat. L.* —.]

[**SEC. 1.**] [**Marshals and deputy marshals — per diem.**] * * * That marshals and office deputy marshals (except in the district of Alaska) may be granted a per diem of not to exceed \$4 and \$3, respectively, in lieu of subsistence, instead of, but under the conditions prescribed for, the present allowance for actual expenses of subsistence.

This and the three paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[**Assistant district attorneys — compensation.**] * * * That except as otherwise prescribed by law the compensation of such of the assistant district attorneys authorized by section eight of the Act approved May twenty-eighth, eighteen hundred and ninety-six, as the Attorney General may deem necessary, may be fixed at not exceeding \$3,000 per annum. [— *Stat. L.* —.]

For the Act of May 28, 1896, ch. 252, § 8, mentioned in the text, see 4 Fed. Stat. Ann. 71; 4 Fed. Stat. Ann. (2d ed.) 622.

[**Clerks of court — renewal of bonds.**] * * * That the Attorney General is authorized to require the official bonds of clerks of United States courts to be renewed every four years, and to fix the amounts of such bonds within statutory limits. Failure to take such action shall not affect the liability under such bonds, but upon failure or refusal of any clerk to execute such new bond or bonds his office shall be deemed vacant by order of the President and so declared by the district attorney in open court. [— *Stat. L.* —.]

[**Criers — attendance of juries — vacation.**] * * * That all persons employed under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the

order of the courts: *Provided further*, That no such persons shall be employed during vacation. [— *Stat. L.* —.]

For R. S. sec. 715, mentioned in the text, see 4 Fed. Stat. Ann. 81; 4 Fed. Stat. Ann. (2d ed.) 635.

Provisions identical with those of this paragraph have appeared in like Acts for preceding years.

JUDICIARY

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CROSS-REFERENCES

Costs by Seamen, see COSTS.

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I. THE JUDICIAL CODE — AMENDMENTS

An Act To amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workmen's compensation law of any State.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[SEC. 1.] [District courts — jurisdiction in what cases — Judicial Code, sec. 24, cl. 3 amended.] That clause three of section twenty-four of the Judicial Code is hereby amended to read as follows:

“Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.” [—*Stat. L.*—.]

For Judicial Code, § 24, clause 3, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 139; 4 Fed. Stat. Ann. (2d ed.) 839, 1005.

Section 2 of this Act amending Judicial Code, § 256, is given *infra*, p. 414.

An Act To amend section thirty-three of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven.

[*Act of Aug. 23, 1916, ch. 399, 39 Stat. L. 532.*]

[Suits and prosecutions against revenue officers, etc.— Judicial Code, sec. 33 amended.] That section thirty-three of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

“SEC. 33. That when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on

account of any right, title, or authority claimed by such officer or other person under any such law, or is commenced against any person holding property or estate by title derived from any such officer and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer, or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty in executing any order of such House, the said suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court next to be holden in the district where the same is pending upon the petition of such defendant to said district court and in the following manner: Said petitions shall set forth the nature of the suit or prosecution and be verified by affidavit and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced or of the United States stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or any other process except *capias*, the clerk of the district court shall issue a writ of *certiorari* to the State court requiring it to send to the district court the record and the proceedings in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court or left at his office by the marshal of the district or his deputy or by some other person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court, shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On

failure of the plaintiff so to proceed, judgment of non prosecutur may be rendered against him, with costs for the defendant. [39 Stat. L. 532.]

For Judicial Code, § 33, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 148; 5 Fed. Stat. Ann. (2d ed.) 380.

Any civil suit or criminal prosecution commenced in the court of any state against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status or in respect to which he claims any right, title or authority under any law of the United States respecting the military forces thereof, or under the laws of war, may at any time before the trial or final hearing thereof be removed to the District Court of the United States in the district where the same is pending in the manner prescribed by this section, and said court shall have power to hear and determine the cause, by virtue of Article of War 117. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

An Act To amend section seventy two of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

[*Act of May 16, 1916, ch. 122, 39 Stat. L. 122.*]

[California judicial districts — territory — terms — office of clerk — Judicial Code, sec. 72 amended.] That section seventy-two of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

"SEC. 72. The State of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced, on the date last mentioned, in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in May and the second Monday in November; and for the southern division, at Los Angeles on the second Monday in January and the second Monday in July, and at San Diego on the second Monday in March and September. The northern district shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono, which shall constitute the northern division of said district; also the territory embraced, on the date last mentioned, in the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito, which shall constitute the southern division of said district. Terms of the district court for the northern division of the district shall be held at Sacramento on the second Monday in April and the first Monday in October, and at Eureka on the third Monday in July;

and for the southern division of the northern district, at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November. The clerk of the district court for the northern district shall maintain an office at Sacramento, in charge of himself or a deputy, which shall be kept open at all times for the transaction of the business of the court." [39 Stat. L. 122.]

For Judicial Code, § 72, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 163; 5 Fed. Stat. Ann. (2d ed.) 555.

An Act To amend section seventy-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, and for other purposes.

[Act of June 12, 1916, ch. 143, 39 Stat. L. 225.]

[Colorado judicial district — terms — place of holding court — deputy marshal — deputy clerk — Judicial Code, sec. 73 amended.] That section seventy-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

"SEC. 73. That the State of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesday in May and November; at Pueblo, on the first Tuesday in April; at Grand Junction on the second Tuesday in September; at Montrose on the third Tuesday in September, and at Durango on the fourth Tuesday in September.

"That the Secretary of the Treasury, in constructing the public buildings heretofore authorized to be constructed at the cities of Grand Junction and Durango, be, and he is hereby, authorized and empowered to provide accommodations in each of said buildings for post office, United States court, and other governmental offices, and the existing authorizations for said buildings be and the same are hereby respectively amended accordingly; and the unexpended balance of all appropriations heretofore made for the construction of said buildings and all appropriations which may be provided in any pending legislation, or that hereafter may be made for the construction of said buildings, are hereby made available for the purpose stated in this paragraph: *Provided*, That if at the same time the holding of the terms of said court in any year in either of said cities of Grand Junction and Durango there is no business to be transacted by said court, the term may be adjourned or continued by order of the judge of said court in chambers at Denver, Colorado: *And provided further*, That the marshal and clerk of said court shall each respectively appoint at least one deputy to reside at and who shall maintain an office at each of the four said places where said court is to be held by the terms of this Act." [39 Stat. L. 225.]

For Judicial Code, § 73, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 164; 5 Fed. Stat. Ann. (2d ed.) 557.

An Act To amend section eighty-one of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

[Act of April 27, 1916, ch. 90, 39 Stat. L. 55.]

[Iowa judicial districts — terms — office of clerk — Judicial Code, sec. 81 amended.] That section eighty-one of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and it hereby is, amended so as to read as follows:

"SEC. 81. The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa.

"The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division.

"Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October.

"The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, Johnson, and Clinton, which shall constitute the Davenport division of said

district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district.

“Terms of the district court for the eastern division shall be held at Keokuk on the sixth Tuesday after the fourth Tuesday in February and the eighth Tuesday after the third Tuesday in September; for the central division, at Des Moines on the tenth Tuesday after the fourth Tuesday in February and the tenth Tuesday after the third Tuesday in September; for the western division, at Council Bluffs on the fourth Tuesday in February and the sixth Tuesday after the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday after the fourth Tuesday in February and the third Tuesday in September; for the Davenport division, at Davenport on the eighth Tuesday after the fourth Tuesday in February and the second Tuesday after the third Tuesday in September; and for the Ottumwa division, at Ottumwa on the second Tuesday after the fourth Tuesday in February and the fourth Tuesday after the Third Tuesday in September.

“The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa for the transaction of the business of said divisions.” [39 Stat. L. 55.]

For Judicial Code, § 81, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 168; 5 Fed. Stat. Ann. (2d ed.) 563.

This section had been previously amended by the Act of Feb. 23, 1916, ch. 32, 39 Stat. L. 12, entitled “An Act To amend chapter two hundred and thirty-one, known as the Judicial Code, Act of March third, nineteen hundred and eleven, volume thirty-six, United States Statutes at Large, section eighty-one, page eleven hundred and eleven” which read as follows:

“That section eighty-one, Act of March third, nineteen hundred and eleven, known as the Judicial Code, be, and the same is hereby, amended to read as follows:

“The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesday in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the

territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district. Terms of the district court for the eastern division shall be held at Keokuk on the sixth Tuesday after the fourth Tuesday in February and the eighth Tuesday after the third Tuesday in September; for the central division, at Des Moines on the tenth Tuesday after the fourth Tuesday in February and the tenth Tuesday after the third Tuesday in September; for the western division, at Council Bluffs on the fourth Tuesday in February and the sixth Tuesday after the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday after the fourth Tuesday in February and the third Tuesday in September; for the Davenport division, at Davenport on the eighth Tuesday after the fourth Tuesday in February and the second Tuesday after the third Tuesday in September; and for the Ottumwa division, at Ottumwa on the second Tuesday after the fourth Tuesday in February and the fourth Tuesday after the third Tuesday in September. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa for the transaction of the business of said divisions."

An Act To amend section eighty-two, chapter two hundred and thirty-one, of the Act to codify, revise, and amend the laws relating to the judiciary.

[*Act of Sept. 6, 1916, ch. 447, 39 Stat. L. 725.*]

[**Kansas — judicial districts — deputy clerks — deputy marshals — Judicial Code, sec. 82 amended.**] That section eighty-two (page eleven hundred and twelve, part one, volume thirty-six, Statutes at Large) of the Act to codify, revise, and amend the laws relating to the judiciary be amended to read as follows:

"SEC. 82. That the State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the

second Monday in January and the first Monday in October; and at Salina on the second Monday in May; terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint three deputies, one of whom shall reside and keep his office at Fort Scott, one at Wichita, and the other at Salina, and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott and the marshal shall also appoint a deputy, who shall reside and keep his office at Kansas City." [39 Stat. L. 725.]

For Judicial Code, § 82, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 169; 5 Fed. Stat. Ann. (2d ed.) 565.

An Act To amend section ninety-nine of the Act to codify, revise, and amend the laws relating to the judiciary.

[Act of July 17, 1916, ch. 248, 39 Stat. L. 386.]

[North Dakota judicial districts — Judicial Code, sec. 99 amended.]

That section ninety-nine of the Act to codify, revise, and amend the laws relating to the judiciary, be amended to read as follows:

"SEC. 99. That the State of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of January, nineteen hundred and sixteen, in the countries of Burleigh, Logan, McIntosh, Emmons, Kidder, McLean, Adams, Bowman, Dunn, Hettinger, Morton, Stark, Golden Valley, Slope, Sioux, Oliver, Mercer, Billings, and McKenzie shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Sargent, Ransom, and Steele shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson shall constitute the northeastern; and the territory embraced on the date last mentioned in the counties of Ramsey, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, Divide, Montrail, Burke, and Renville shall constitute the western division; and the territory embraced on the date last mentioned in the counties of Griggs, Foster, Eddy, Wells, Sheridan, Stutsman, Lamoure, and Dickey shall constitute the central division. The several Indian reservations and parts thereof within said State shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarek on the first Tuesday in March; for the southeastern division, at Fargo, on the third Tuesday in May; for the northeastern division, at Grand Forks, on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; for the western division, at Minot on the second Tuesday in October; and for the central division, at Jamestown on the second Tuesday in April. The clerk of the court shall maintain an office in charge of

himself or a deputy at each place at which court is held in his district: *Provided*, That the Government of the United States shall incur no expense for rent, light, heat, water, or janitor service for the building in which court shall be held until such time as the Government may erect its own court room." [39 Stat. L. 386.]

For Judicial Code, § 99, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 179; 5 Fed. Stat. Ann. (2d ed.) 582.

An Act To amend section one hundred and one of the Judicial Code.

[Act of June 13, 1918, ch. —, — Stat. L. —.]

[Oklahoma judicial districts — Judicial Code, sec. 101 amended.] That section one hundred and one of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, as amended by the Act approved February twentieth, nineteen hundred and seventeen, be, and the same is hereby, amended so as to read as follows:

"SEC. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Okfuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January, at Vinita on the first Monday in March, at Tulsa on the first Monday in April, at South McAlester on the first Monday in June, at Ardmore on the first Monday in October, and at Chickasha on the first Monday in November of each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Oklahoma City on the first Monday in January, at Enid on the first Monday in March, at Guthrie on the first Monday in May, at Lawton on the first Monday in September, and at Woodward on the second Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City." [— Stat. L. —.]

For Judicial Code, § 101, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 181; 5 Fed. Stat. Ann. (2d ed.) 584.

This section had previously been amended by an Act of Feb. 20, 1917, ch. 102, 39

Stat. L. 927, entitled "An Act To amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,'" which was as follows:

"That section one hundred and one of the Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

"SEC. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Adair, Atoka, Bryant, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Okfuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita, on the first Monday in March; at Tulsa, on the first Monday in April; at South McAlistar, on the first Monday in June; at Ardmore, on the first Monday in October; and at Chickasha, on the first Monday in November in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Guthrie on the first Monday in January; at Oklahoma City, on the first Monday in March; at Enid, on the first Monday in June; at Lawton, on the first Monday in September; and at Woodward, on the first Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City."

An Act To amend section one hundred and eleven of the Judicial Code.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Virginia Judicial Districts—Judicial Code, sec. 111 amended.] That section one hundred and eleven of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

"SEC. 111. The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

"The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

"Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July.

"The western district shall include the territory embraced on the first

day of July, nineteen hundred and ten, in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

“Terms of the district court shall be held at Lynchburg on the second Mondays in January and July; at Roanoke on the second Monday in February and the first Monday in August; at Danville on the second Monday in March and the third Monday in September; at Charlottesville on the second Mondays in April and November; at Harrisonburg on the fourth Mondays in April and November; at Big Stone Gap on the third Monday in May and the second Monday in October; and at Abingdon on the second Mondays in June and December.

“The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court.”
[— *Stat. L.* —.]

For Judicial Code, § 111, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 187; 5 Fed. Stat. Ann. (2d ed.) 594.

SEC. 2. [Time of taking effect of Act.] That this Act shall become effective on July first, nineteen hundred and eighteen.

[**SEC. 1.**] [**Supreme court — terms — Judicial Code, sec. 230 amended.**] That section two hundred and thirty of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven, known as the Judicial Code, be, and it hereby is, amended so as to read as follows:

“**SEC. 230.** The Supreme Court shall hold at the seat of government one term annually, commencing on the first Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business.” [39 *Stat. L.* 726.]

The foregoing section 1 and the following section 2 are from an Act of Sept. 6, 1916, ch. 448, entitled “An Act To amend the Judicial Code; to fix the time when the annual terms of the Supreme Court shall commence; and further to define the jurisdiction of that court.”

Sections 3-7 of this Act are given, *infra*, p. 420 *et seq.*

For Judicial Code, § 230, amended by this section, see 1912 Supp. Fed. Stat. Ann. 229; 5 Fed. Stat. Ann. (2d ed.) 708.

SEC. 2. [Writs of error from judgments and decrees of state courts — certiorari, etc.— Judicial Code, sec. 237 amended.] That section two hundred and thirty-seven of the Judicial Code, as amended by “An Act to amend an Act entitled ‘An Act to codify, revise, and amend the laws relating to the judiciary,’ approved March third, nineteen hundred and

eleven," approved December twenty-third, nineteen hundred and fourteen, be, and it hereby is, amended so as to read as follows:

"SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the same to the court, from which it was removed by the writ.

"It shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority." [39 Stat. L. 726.]

See the note to the preceding section 1 of this Act.

For Judicial Code, § 237, amended by this section, see 1912 Supp. Fed. Stat. Ann. 230; 5 Fed. Stat. Ann. (2d ed.) 723.

I. In general, 412.

II. Writ of error 412.

III. Certiorari, 413.

I. IN GENERAL

"The difference between the two modes of securing a review, as contemplated by the statute, lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of a sound discretion." Philadelphia, etc., Coal, etc., Co. v. Gilbert, (1917) 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —.

II. WRIT OF ERROR

A writ of error must be dismissed, even though the defendant in error does

not object to the jurisdiction, where the judgment of the state court was entered after this act took effect and did not draw in question the validity of any thing described in this section as authorizing review on writ of error. Northern Pac. R. Co. v. Solum, (1918) 247 U. S. 477, 38 S. Ct. 550, 62 U. S. (L. ed.) —.

Frivolous federal question.—No substantial federal question which will support the appellate jurisdiction of the federal Supreme Court is involved in the contentions that the enforcement in a state court of the statutory lien of an attorney upon his client's cause of action against the defendant, who, with notice of such lien, satisfied a judgment rendered by a federal District Court in a suit brought by other counsel on the same

cause of action, takes defendant's property and denies the equal protection of the laws, contrary to U. S. Const., 14th Amend., by imposing a liability not imposed by the federal court judgment, deprives defendant of the protection afforded by congressional legislation to those who pay to the clerks of the federal district courts money in satisfaction of judgments entered therein, and gives to two attorneys liens for the same service. *Union Pac. R. Co. v. Laughlin*, (1918) 247 U. S. 204, 38 S. Ct. 436, 62 U. S. (L. ed.) —, where dismissing a writ of error, the court said: "The Missouri statute simply gives a cause of action against one who, with knowledge of the existence of a lien, deforces it. To grant such a remedy against the wrongdoer clearly does not deprive him of any right guaranteed by the federal Constitution, even if the instrument by means of which the wrong is accomplished happens to be the judgment of a federal court. No substantial federal question is involved. We have no occasion, therefore, to consider whether the validity of the Missouri statute was drawn in question (*Philadelphia & R. Coal & I. Co. v. Gilbert*, 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —."

Validity of state statute or authority. — In *Ireland v. Woods*, (1918) 246 U. S. 323, 38 S. Ct. 319, 62 U. S. (L. ed.) —, Ireland, who was under arrest by Woods, a police commissioner of New York city, on a warrant of the Governor of New York issued in compliance with a requisition of the Governor of New Jersey and charged as a fugitive from the justice of New Jersey, sued out a writ of habeas corpus alleging that his arrest was illegal and in violation of subdivision 2 of sec. 2, Art. IV of the federal Constitution and of sec. 5278 of the United States Revised Statutes. He did not contend that there was no sufficient showing before the Governor to warrant the exercise of his jurisdiction, and the court did not pass upon or even refer to the allegation that his arrest was in violation of the federal Constitution or statutes, but the writ was dismissed upon consideration of the testimony and consequent rejection of the petitioner's contention that he was not in New Jersey at the time when the indictment charged the commission of the offense. A writ of error from the federal Supreme Court was dismissed.

Validity of authority exercised under state. — The contention in an independent suit to quiet title that to sustain the validity of a prior judicial sale of the real property of a decedent in order to pay his debts would deny the due process of law guaranteed by U. S. Const. 14th Amend., because the state statutory requirement as to time for hearing when service was had by publication was not

observed, does not draw in question the validity of an authority exercised under a state, within the meaning of this provision. *Stadelman v. Miner*, (1918) 246 U. S. 544, 38 S. Ct. 359, 62 U. S. (L. ed.) —, dismissing a writ of error.

An order denying a motion to set aside the service of summons upon the designated agent of a foreign corporation doing business within the state in an action for personal injuries received outside the state, which motion was made on the ground that defendant's consent to be sued in the state by service on such agent was impliedly limited to causes of action arising in connection with business transacted within the state, is not reviewable by writ of error, but by certiorari. *Philadelphia, etc., R. Co. v. Gilbert*, (1917) 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —, where the court said: "All that was drawn in question by the motion was the validity of the service and the power of the court, consistently with the 1st section of the 14th Amendment,—probably meaning the due process of law clause,—to proceed upon that service to a hearing and determination of the case. It did not question the validity of any treaty or statute of, or authority exercised under, the United States. Neither did it challenge the validity of a statute of, or an authority exercised under, any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. Challenging the power of the court to proceed to a decision of the merits did not draw in question an authority exercised under the state, for, as this court has said, the power to hear and determine cases is not the kind of authority to which the statute refers. *Bethell v. Demaret*, 10 Wall. 537, 540, 19 L. ed. 1007, 1008; *French v. Taylor*, 199 U. S. 274, 277, 50 L. ed. 189, 191, 26 Sup. Ct. Rep. 76. It follows that the judgment cannot be reviewed upon writ of error."

Upon the authority of the foregoing case of *Philadelphia, etc., R. Co. v. Gilbert*, a writ of error to the Supreme Court of Missouri was dismissed for want of jurisdiction in *Cave v. Missouri*, (1918) 246 U. S. 650, 38 S. Ct. 334, 62 U. S. (L. ed.) —.

III. CERTIORARI

Finality of judgment for purpose of certiorari. — In *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) —, the administrator of an employee of an interstate railroad company sued under the federal Employers' Liability Act for loss of his intestate's life, and the defendant paid the conceded loss to the plaintiff administrator. A father and mother but no widow or children survived. The father, Tobin, sued the administrator

in a South Dakota court to recover half the amount as his share of the loss. Setting aside the section of the trial court rejecting the claim, but not specifically fixing the amount of the father's recovery, the state Supreme Court directed a new trial to accomplish that result, thereupon application was made by the administrator to the federal Supreme Court for a writ of certiorari on the ground that such decision involved questions under the federal Employers' Liability Act reviewable by certiorari. Denying the petition for the writ, and holding that the judgment was not final, the court said: "The act in question, although it deprived of the right of review by writ of error which had hitherto obtained in certain cases, and substituted as to such cases the right of petitioning for review by certiorari, subjected this last right to the same limitation as to the finality of the judgment of the state court sought to be reviewed which had prevailed from the beginning under § 709 Rev. Stat., § 237 Judicial Code. Finality, therefore, continues to be an essential for the purposes of the remedy by certiorari conferred by the Act of 1916. It may be indeed said that although the case was remanded by the court below for a new trial, the action of the court was in a sense final because it determined the ultimate right of the father to recover and the general principles by which that right was to be measured. But that contention is not open, as it was settled under section 709 Rev. Stat., § 237 Judicial Code, that the finality contemplated was to be determined by the face of the record and the formal character of the judgment rendered,—a principle which excluded all conception of finality for the purpose of review in a judgment like that below rendered. *Haseltine v. Central Nat. Bank*, 183 U. S. 130, 46 L. ed. 117, 22 Sup. Ct. Rep. 49; *Schlosser v. Hemphill*, 198 U. S. 173, 49 L. ed. 1000, 25 Sup. Ct. Rep. 654; *Louisiana Nav. Co. v. Oyster Commission*, 226 U. S. 99, 57 L. ed. 138, 33 Sup. Ct. Rep. 78; *Coe v. Armour Fertilizer Works*, 237 U. S. 413, 418, 419, 59 L. ed. 1027, 1029, 1030, 35 Sup. Ct. Rep. 625. The re-enactment of the requirement of finality in the Act of 1916 was, in the nature of things, an adoption of the construction on the subject which had prevailed for so long a time. There being, then, no final judgment within the contemplation of the

Act of 1916, the petition for a writ of certiorari is denied."

Reported cases.—A writ of certiorari to the Supreme Court of New York was granted in *Erie R. Co. v. Shuart*, (1918) 246 U. S. 659, 38 S. Ct. 315, 62 U. S. (L. ed.) —, to the Supreme Court of Missouri in *Pryor v. Williams*, (1918) 246 U. S. 660, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Court of Appeals of Georgia in *Evans v. Savannah Nat. Bank*, (1918) 246 U. S. 670, 38 S. Ct. 423, 62 U. S. (L. ed.) —.

A writ of certiorari was denied in: *Rouss v. New York Ass'n Bar*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of New York; *Berg v. Baker*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Minnesota; *Rieger v. Abrams*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Washington; *Chicago, etc., R. Co. v. Ray*, (1918) 246 U. S. 662, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Oklahoma; *Illinois Cent. R. Co. v. Skinner*, (1918) 246 U. S. 663, 38 S. Ct. 333, 62 U. S. (L. ed.) —, to the Kentucky Court of Appeals; *Craig Mountain Lumber Co. v. Sumey*, (1918) 246 U. S. 667, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Idaho; *Huller v. New Mexico*, (1918) 246 U. S. 667, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of New Mexico; *Grand Lodge v. Vicksburg Lodge No. 26*, (1918) 246 U. S. 668, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Mississippi; *Cincinnati Northern R. Co. v. Guy*, (1918) 246 U. S. 668, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Michigan; *White Gulch Min. Co. v. Industrial Acc. Commission*, (1918) 246 U. S. 671, 38 S. Ct. 423, 62 U. S. (L. ed.) —; *Harker v. Greene County*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Iowa; *Citizens Bank v. Opperman*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Indiana; *New York Cent. R. Co. v. Chicago*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Illinois; *Commonwealth Trust Co. v. Pittsburgh First-Second Nat. Bank*, (1918) 246 U. S. 675, 38 S. Ct. 425, 62 U. S. (L. ed.) —, to the Supreme Court of Pennsylvania.

SEC. 2. [Exclusive jurisdiction of United States courts in what cases — Judicial Code, sec. 256, cl. 3, amended.] That clause three of section two hundred and fifty-six of the Judicial Code is hereby amended to read as follows:

“Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen’s compensation law of any State.” [— *Stat. L.* —.]

This is from an Act of Oct. 6, 1917, ch. —, entitled “An Act To amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workman’s compensation law of any State.”

The reason for the amendment made by this section was doubtless the decision of the Supreme Court in *Southern Pac. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451.

Section 1 of this Act amending Judicial Code, § 24 cl. 3, is given, *supra*, p. 401.

For Judicial Code, § 256, cl. 3, amended by this section, see 1912 Supp. Fed. Stat. Ann. 239; 5 Fed. Stat. Ann. (2d ed.) 921, 923.

An Act To amend section two hundred and seventy-six of an Act entitled “An Act to codify, revise and amend the laws relating to the judiciary,” approved March third, nineteen hundred and eleven.

[*Act of Feb. 3, 1917, ch. 27, 39 Stat. L. 873.*]

[**Jurors, how drawn — Judicial Code, sec. 276 amended.**] That section two hundred and seventy-six of an Act entitled “An Act to codify, revise, and amend the laws relating to the judiciary,” approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

“SEC. 276. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.” [39 *Stat. L.* 873.]

For Judicial Code, § 276, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 245; 5 Fed. Stat. Ann. 1066.

II. PROVISIONS FOR PARTICULAR DISTRICTS OR CIRCUITS

An Act To provide for holding sessions of the United States district court in the district of Maine and for dividing said district into divisions, and providing for offices of the clerk and marshal of said district to be maintained in each of said divisions, and for the appointment of a field deputy marshal in the division in which the marshal does not reside.

[*Act of Sept. 8, 1916, ch. 475, 39 Stat. L. 850.*]

[**SEC. 1.**] [**Maine judicial district — sessions of court — division of district.**] That hereafter, and until otherwise provided by law, two sessions of the United States District Court for the District of Maine shall be held in each and every year in the city of Bangor, in said district, beginning, respectively, on the first Tuesday of February and the first Tuesday of June, and three sessions of said court shall be held in each and every year in the city of Portland, in said district, beginning, respectively, on the first Tuesday of April, on the third Tuesday of September, and on the second Tuesday in December. [*39 Stat. L. 850.*]

SEC. 2. [Clerks and marshals — deputies.] The clerk of said district court for said district of Maine and the marshal of said district shall each at all times maintain by himself or by deputy an office in charge of himself or deputy, both at said city of Bangor and at said city of Portland. The deputy clerk in charge of the office in the division in which the clerk does not reside himself shall reside in the city where the office of which he has charge is located. That said marshal shall appoint a field deputy, who shall have charge of the office in the division in which the marshal does not reside himself, who shall reside in the city where the office of which he has charge is located, and who, within and for said division, in the absence of the marshal, shall have all the powers of the marshal, and who shall also, throughout said district of Maine, have all the powers of other deputy marshals. And such field deputy, before he enters on the duties of his office, shall give bond before the judge of said district of like tenor, effect, and amount and of similar form and condition, with like sureties, and to be approved in like manner, as now or may hereafter be required by law of the marshal of said district. [*39 Stat. L. 850.*]

SEC. 3. [Divisions — number — boundaries.] That for the purpose of holding terms of the United States district court the district of Maine as heretofore constituted shall be divided into two divisions, to be known, respectively, as the northern and southern divisions. The counties of Aroostook, Penobscot, Piscataquis, Washington, Hancock, Waldo, and Somerset shall be known as the northern division, the court for which shall be held in the said city of Bangor. The remaining counties in said State and district of Maine shall constitute the southern division, the court for which shall be held in the said city of Portland. [*39 Stat. L. 850.*]

SEC. 4. [Jurisdiction and venue — divisions as separate districts.] That for the purpose of determining the jurisdiction and venue of all

causes, suits, actions, bills, petitions, matters, libels, proceedings, prosecutions, indictments, complaints, informations, and other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, cognizable in the United States district court, each of said divisions shall be as if it were a separate and distinct judicial district of the United States. There shall be but one judge, one clerk, one marshal, and one district attorney for said district of Maine. United States commissioners in either of said divisions, until otherwise provided by law, shall be appointed and have jurisdiction and cognizance through said district of Maine in the same manner and to the same extent and effect that they now have under existing law. [39 Stat. L. 851.]

SEC. 5. [Transfer of causes from one division to another.] That any cause, suit, action, bill, petition, matter, libel, proceeding, prosecution, indictment, complaint, information, or other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, pending in either of said divisions, when all the parties thereto so stipulate in writing, and where the ends of justice or the convenience of the parties will be promoted thereby, may, at the discretion of the court or judge, be transferred wholly or specially for the hearing, trial, or determination of any single proceeding, matter, step, or motion therein from one of said divisions to the other. On request of all accused in any criminal prosecution and of all claimants in any cause, proceeding, libel, information, or other matter in rem, the same may be transferred, at the discretion of the court or judge from one of said divisions to the division in which a term of said court is next to be held, without the joinder in such request of the United States when the Government is the only other party thereto not joining in such request. [39 Stat. L. 851.]

SEC. 6. [Ex parte, etc., proceedings — hearings by consent.] That all ex parte, of course, default and pro confesso, proceedings and matters, and all interlocutory matters in which all interested parties are present and consenting that such hearing may be had, in whichever of said divisions the same may be cognizable or pending, may be heard and determined by the court or judge and all findings, orders, judgments, and decrees be made, and all mesne and final process therein be tested, sealed, issued, and renewed in either of said divisions, in term time, vacation, or chambers. [39 Stat. L. 851.]

SEC. 7. [Change of venue — continuance.] That nothing in this Act contained shall be construed to deprive the court or judge of the power to grant a change of venue or continuance in any cause, proceeding, or matter whatsoever according to law and the requirements of justice. [39 Stat. L. 851.]

SEC. 8. [Time of taking effect of Act — pending causes, etc.— repeal of inconsistent Acts.] That this Act shall take effect on the day following its passage, but it shall not apply to or in anywise affect any cause, suit,

action, bill, petition, matter, libel, proceeding, prosecution, indictment, complaint, information, stipulation, bail bond, or recognizance now pending in said court, or which has already been instituted, begun, filed, entered, made, served, found, or taken, but the same shall depend, be entered, returned, continued, prosecuted, tried, heard, and determined and suitable and appropriate orders, judgment, decrees, and executions, mesne and final and all other process, attachment, monitions, stipulations, bonds, recognizances therein, shall be made, signed, tested, sealed, issued, renewed, served, executed, entered, and returned, the same as under existing law and as if this Act had never been passed, except for the purposes mentioned in sections five and six of this Act. All Acts and parts of Acts inconsistent with this Act are hereby repealed. [39 Stat. L. 851.]

An Act To create an additional judge in the district of New Jersey.

[Act of April 11, 1916, ch. 67; 39 Stat. L. 48.]

[SEC. 1.] [New Jersey judicial district — additional judge — residence, etc.] That the President of the United States be, and he hereby is, authorized and directed, by and with the advice and consent of the Senate, to appoint an additional judge of the district court of the United States for the district of New Jersey, who shall reside in said district, and whose term of office, compensation, duties, and powers shall be the same as now provided by law for the judge of said district. [39 Stat. L. 48.]

SEC. 2. [Time of taking effect.]. That this Act shall take effect immediately. [39 Stat. L. 48.]

An Act To establish a term of the United States circuit court of appeals at Asheville, North Carolina.

[Act of July 17, 1916, ch. 546, 39 Stat. L. 385.]

[North Carolina Circuit Court of Appeals—Fourth Circuit—additional term.] That the judges of the United States Circuit Court of Appeals for the Fourth Circuit shall annually open and hold a term of the court of said circuit at Asheville, North Carolina, at such time as may be fixed by the judges thereof. [39 Stat. L. 385.]

An Act Providing for the establishment of two additional terms of the district court for the eastern district of North Carolina at Raleigh, North Carolina.

[Act of April 27, 1916, ch. 91, 39 Stat. L. 56.]

[North Carolina eastern judicial district — additional terms.] That two additional terms of the district court, for the trial of civil cases, for the eastern district of North Carolina shall be held at Raleigh, North

Carolina, on the first Monday in March and the first Monday in September. [39 Stat. L. 56.]

An Act To amend an Act entitled "An Act to provide for the appointment of a district judge, district attorney, and marshal for the western district of South Carolina, and for other purposes," approved March third, nineteen hundred and fifteen, so as to provide for terms of the district court to be held at Anderson, South Carolina.

[Act of Sept. 1, 1916, ch. 434, 39 Stat. L. 721.]

[South Carolina — districts — terms — office of clerks — former Act amended.] That section five of an Act entitled "An Act to provide for the appointment of a district judge, district attorney, and marshal for the western district of South Carolina, and for other purposes," approved March third, nineteen hundred and fifteen, be, and the same is hereby, amended so as to read as follows:

"SEC. 5. That the terms of the district court for the eastern district shall be held at Charleston on the first Tuesday in June and December; at Columbia, on the third Tuesday in January and first Tuesday in November; at Florence, first Tuesday in March; and at Aiken, on the first Tuesday in April and October.

"Terms of the district court of the western district shall be held at Greenville on the first Tuesday in April and the first Tuesday in October; at Rock Hill, the second Tuesday in March and September; at Greenwood, the first Tuesday in February and November; and at Anderson, the fourth Tuesday in May and November.

"The office of the clerk of the district court for the western district shall be at Greenville, and the office of the clerk of the district court for the eastern district shall be at Charleston." [39 Stat. L. 721.]

For the Act of March 3, 1915, ch. 100, § 5, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 140; 5 Fed. Stat. Ann. (2d ed.) 1096.

An Act Providing for the establishment of a term of the district court for the middle district of Tennessee at Winchester, Tennessee.

[Act of June 22, 1916, ch. 161, 39 Stat. L. 232.]

[Tennessee middle district — terms.] That the term of the district court for the middle district of Tennessee shall be held at Winchester on the first Monday in April and the third Monday in November. [39 Stat. L. 232.]

An Act To provide for an additional judge in the State of Texas.

[Act of Feb. 26, 1917, ch. 120, 39 Stat. L. 938.]

[Texas western judicial district — additional judge.] That the President of the United States, by and with the advice and consent of the Senate,

shall appoint an additional judge of the district court of the United States for the Western District of Texas, who shall possess the same powers, perform the same duties, and receive the same compensation and allowance as the present judge of said district, and whose official place of residence shall be maintained at El Paso until otherwise provided by law. [39 Stat. L. 938.]

See the following paragraph of the text.

[SEC. 1.] [Texas western judicial district—salary of additional judge.] * * * For the salary of the additional judge in the State of Texas, to be appointed under the Act of February twenty-sixth, nineteen hundred and seventeen, \$6,000. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

The Act of Feb. 26, 1917, ch. 120, mentioned in this section is given in the preceding paragraph of the text.

An Act To create a new division of the northern judicial district of Texas, and to provide for terms of court at Wichita Falls, Texas, and for a clerk for said court, and for other purposes.

[Act of Feb. 26, 1917, ch. 122, 39 Stat. L. 939.]

[SEC. 1.] [Texas northern judicial district—creation.] That the counties of Archer, Baylor, Clay, Cottle, Foard, Montague, King, Knox, Wichita, Wilbarger and Young shall constitute a division of the northern judicial district of Texas.

SEC. 2. [Terms of court—member—place of holding court.] That terms of the district court of the United States for the said northern district of Texas shall be held twice each year at the city of Wichita Falls, in Wichita County, on the fourth Monday in March, and the third Monday in November. The clerk of the court for the northern district of Texas shall maintain an office in charge of himself or a deputy at Wichita Falls, which shall be kept open at all times for the transaction of the business of the court: *Provided*, That suitable accommodations for holding court at Wichita Falls shall be provided by the county or municipal authorities without expense to the United States. [39 Stat. L. 939.]

III. APPELLATE JURISDICTION AND PROCEDURE

SEC. 3. [Finality of judgments of Circuit Court of Appeals—former Act amended.] That section four of “An Act to amend an Act entitled ‘An Act to codify, revise, and amend the laws relating to the judiciary,’ approved March third, nineteen hundred and eleven,” approved January twenty-eighth, nineteen hundred and fifteen, be; and it hereby is, amended so as to read as follows:

"SEC. 4. That judgments and decrees of the circuit courts of appeals in all proceedings and causes arising under 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July first, eighteen hundred and ninety-eight, and in all controversies arising in such proceedings and causes; also, in all causes arising under 'An Act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April twenty-second, nineteen hundred and eight; also, in all causes arising under 'An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March fourth, nineteen hundred and seven; also, in all causes arising under 'An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' approved March second, eighteen hundred and ninety-three; and, also, in all causes arising under any amendment or supplement to any one of the aforementioned Acts which has been heretofore or may hereafter be enacted, shall be final, save only that it shall be competent for the Supreme Court to require by certiorari, upon the petition of any party thereto, that the proceeding, case, or controversy be certified to it for review and determination, with the same power and authority and with like effect as if taken to that court by appeal or writ of error." [39 Stat. L. 727.]

The foregoing section 3 and the following sections 4-7, are from an Act of Sept. 6, 1916, ch. 448, entitled "An Act To amend the Judicial Code; to fix the time when the annual terms of the Supreme Court shall commence; and further to define the jurisdiction of that court."

Sections 1 and 2 of this Act, amending Judicial Code, §§ 230, 237, are given, *supra*, pp. 411, 412.

For the Act of Jan. 28, 1915, ch. 22, § 4, amended by this section, see 1916 Supp. Fed. Stat. Ann. 137, 1 Fed. Stat. Ann. (2d ed.) 833; 6 Fed. Stat. Ann. (2d ed.) 146.

For the Bankruptcy Act of July 1, 1898, ch. 541, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 464; 1 Fed. Stat. Ann. (2d ed.) 504.

For the Federal Employers' Liability Act of April 22, 1908, ch. 149, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 584; 8 Fed. Stat. Ann. (2d ed.) 1208.

For the "Hours of Service" Act or the "Sixteen Hours" Act of March 4, 1907, ch. 2939, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 581; 8 Fed. Stat. Ann. (2d ed.) 1383.

For the Safety Appliance Act of March 2, 1893, ch. 196, mentioned in this section, see 6 Fed. Stat. Ann. 752; 8 Fed. Stat. Ann. (2d ed.) 1155.

Case arising under Federal Employers' Liability Act.—In *Carolina, etc., R. Co. v. Stroup*, (1917) 244 U. S. 649, 37 S. Ct. 743, 61 U. S. (L. ed.) 1371, the court dismissed for want of jurisdiction, upon the authority of this section, a writ of

error to review a judgment of the Circuit Court of Appeals affirming a judgment of the district court in favor of plaintiff in an action under the federal Employers' Liability Act.

SEC. 4. [Review of judgment or decree — mistake as to proper method — effect.] That no court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mistake or error occurs it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed. [39 Stat. L. 727.]

See the note to the preceding section 3 of this Act.

"This section does not abolish the distinction between writs of error and appeals, but only requires that the party seeking review shall have it in the appropriate way notwithstanding a mistake in choosing the mode of review." *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) —.

Under this section and Judicial Code, sec. 274b, "it would seem to be immaterial whether the case was brought here by appeal or writ of error," said the court in *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 530.

SEC. 5. [Review of judgments, etc., from Philippine Islands.] That no judgment or decree rendered or passed by the Supreme Court of the Philippine Islands more than sixty days after the approval of this Act shall be reviewed by the Supreme Court upon writ or error or appeal; but it shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error or appeal, any cause wherein, after such sixty days, the Supreme Court of the Philippine Islands may render or pass a judgment or decree which would be subject to review under existing laws. [39 Stat. L. 727.]

See the note to section 3 of this Act, *supra*, p. 421.

SEC. 6. [Application for writ of error, etc.—time of making — Philippine Islands.] That no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of: *Provided*, That writs of certiorari addressed to the Supreme Court of the Philippine Islands may be granted if application therefor be made within six months. [39 Stat. L. 727.]

See the note to section 3 of this Act, *supra*, p. 421.

An appeal from the Circuit Court of Appeals was "dismissed for want of jurisdiction upon the authority of" this section 6 in *Glasgow Nav. Co. v. Munson Steamship Line*, (1918) 246 U. S. 647, 38 S. Ct. 315, 62 U. S. (L. ed.) —.

"Upon the authority of" this section 6, a writ of error to the Kentucky Court of Appeals was "dismissed for want of jurisdiction" in *Collard v. Pittsburgh, etc., R. Co.*, (1918) 246 U. S. 653, 38 S. Ct. 336, 62 U. S. (L. ed.) —.

SEC. 7. [Time of taking effect of Act.] That this Act shall take effect thirty days after its approval, but it shall not apply to nor affect any writ of error, appeal, or writ of certiorari theretofore duly applied for. The right of review under existing laws in respect of judgments and decrees entered before this Act takes effect shall remain unaffected for the period of six months thereafter, but at the end of that time such right shall cease. [39 Stat. L. 728.]

See the note to section 3 of this Act, *supra*, p. 421.

Section 4 not affected.—This section "is a saving clause against other provisions of the act and has no effect upon

section 4." *Shuler v. Raton Waterworks Co.*, (C. C. A. 8th Cir. 1917) 247 Fed. 634.

IV. INTERPLEADER

An Act Authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader.

[*Act of Feb. 22, 1917, ch. 113, 39 Stat. L. 929.*]

[Interpleader — insurance companies.] That the district courts of the United States shall have original cognizance to entertain suits in equity begun by bills of interpleader where the same are filed by any insurance company or fraternal beneficiary society, duly verified, and where it is made to appear by such bill that one or more persons, being bona fide claimants against such company or society, reside within the jurisdiction of said court; that such company or society has made or issued some policy of insurance or certificate of membership providing for the payment of a sum of money of at least \$500 as insurance or benefits to a beneficiary or beneficiaries or to the heirs, next of kin, or legal representative of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming or may claim to be entitled to such insurance or benefits and that such company or society deposits the amount of such insurance or benefits with the clerk of said court and abide the judgment of said court. In all such cases the court shall have the power to issue its process for said claimants, returnable at such time as the said court or a judge thereof shall determine, which shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found; to hear said bill of interpleader and decide thereon according to the practice in equity; to discharge said complainant from further liability upon the payment of said insurance or benefits as directed by the court, less complainant's actual court costs; and shall have the power to make such orders and decrees as may be suitable and proper and to issue the necessary writs usual and customary in such cases for the purpose of carrying out such orders and decrees: *Provided*, That in all cases where a beneficiary or beneficiaries are named in the policy of insurance or certificate of membership or where the same has been assigned and written notice thereof shall have been given to the insurance company or fraternal benefit society, the bill of interpleader shall be filed in the district where the beneficiary or beneficiaries may reside. [39 Stat. L. 929.]

Deposit of the amount of insurance with the clerk is a sine qua non for power in the court to issue process. *Penn Mut. Life Ins. Co. v. Henderson*, (N. D. Fla. 1917) 244 Fed. 877.

"The proviso would seem to recognize

the residence of the beneficiary named in the policy or his assignee designated in the policy as fixing the district of proper venue for plaintiffs' suit." *Penn. Mut. Life Ins. Co. v. Henderson*, (N. D. Fla. 1917) 244 Fed. 877.

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I. CHILD LABOR

**An Act To prevent interstate commerce in the products of child labor,
and for other purposes.**

[Act of Sept. 1, 1916, ch. 432, 39 Stat. L. 675.]

[SEC. 1.] [Child labor — interstate or foreign commerce in products prohibited — age limits — prosecution.] That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the products of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution. [39 Stat. L. 675.]

Constitutionality.—Congress exceeded its power under the commerce clause of the federal Constitution in enacting the provisions of this Act, which prohibit the transportation in interstate commerce of manufactured goods the product of a factory in which, within thirty days prior to the removal of the goods, children

under fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in a week, or between seven in the evening and six in the morning. *Hammer v. Dagenhart*, 247 U. S. —, 61 U. S. (L. ed.) 660, 38 S. Ct. 529.

SEC. 2. [Rules and regulations.] That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board to

make and publish from time to time uniform rules and regulations for carrying out the provisions of this Act. [39 Stat. L. 675.]

SEC. 3. [Authority of Secretary of Labor, etc., to enter and inspect factories.] That for the purpose of securing proper enforcement of this Act the Secretary of Labor, or any person duly authorized by him, shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops, factories, manufacturing establishments, and other places in which goods are produced or held for interstate commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this Act as may from time to time be authorized by appropriation or other law. [39 Stat. L. 675.]

SEC. 4. [Duty of district attorney on violation of Act being reported.] That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this Act, or to whom any State factory or mining or quarry inspector, commissioner of labor, State medical inspector, or school-attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided: *Provided*, That nothing in this Act shall be construed to apply to bona fide boys' and girls' canning clubs recognized by the Agricultural Department of the several States and of the United States. [39 Stat. L. 675.]

SEC. 5. [Punishment for violation of Act — guarantee affording protection from prosecution — certificates of permissible age.] That any person who violates any of the provisions of section one of this Act, or who refuses or obstructs entry or inspection authorized by section three of this Act, shall for each offense prior to the first conviction of such person under the provisions of this Act, be punished by a fine of not more than \$200, and shall for each offense subsequent to such conviction be punished by a fine of not more than \$1,000, nor less than \$100, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this Act, for a shipment, delivery for shipment, or transportation who establishes a guaranty issued by the person by whom the goods shipped or delivered for shipment or transportation were manufactured or produced, resident in the United States, to the effect that such goods were produced or manufactured in a mine or quarry in which within thirty days prior to their removal therefrom no children under the age of sixteen years were employed or permitted to work, or in a mill, cannery, workshop, factory, or manufacturing establishment, in which within thirty days prior to the removal of such goods therefrom no children under the age of fourteen years were employed or permitted to work, nor children between the ages of fourteen years and sixteen years employed or permitted to work more than eight hours in any day or more than six days in any week or after the hour of seven o'clock postmeridian or before the hour of six o'clock ante-meridian; and in such event, if the guaranty contains any false statement of a material fact, the guarantor shall be amenable to prosecution and to

the fine or imprisonment provided by this section for violation of the provisions of this Act. Said guaranty, to afford the protection above provided, shall contain the name and address of the person giving the same: *And provided further*, That no producer, manufacturer, or dealer shall be prosecuted under this Act for the shipment, delivery for shipment, or transportation of a product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, if the only employment therein, within thirty days prior to the removal of such product therefrom, of a child under the age of sixteen years has been that of a child as to whom the producer or manufacturer has in good faith procured, at the time of employing such child, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions, and by such persons as may be prescribed by the board, showing the child to be of such an age that the shipment, delivery for shipment, or transportation was not prohibited by this Act. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violations of this Act. In any State designated by the board, an employment certificate or other similar paper as to the age of the child, issued under the laws of that State and not inconsistent with the provisions of this Act, shall have the same force and effect as a certificate herein provided for. [39 Stat. L. 675.]

SEC. 6. [Definitions — Construction of terms.] That the word “ person ” as used in this Act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term “ ship or deliver for shipment in interstate or foreign commerce ” as used in this Act means to transport or to ship or deliver for shipment from any State or Territory or the District of Columbia to or through any other State or Territory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the State, Territory, or district of manufacture or production. [39 Stat. L. 676.]

SEC. 7. [Time of taking effect of Act.] That this Act shall take effect from and after one year from the date of its passage. [39 Stat. L. 676.]

II. HOURS OF LABOR

[Eight hour law — national emergency — suspension of law.] * * * That in case of national emergency the President is authorized to suspend provisions of law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by contracts with the United States: *Provided further*, That the wages of persons employed upon such contracts shall be computed on a basic day rate of eight hours work, with overtime rates to be paid for at not less than time and one-half for all hours work in excess of eight hours. [39 Stat. L. 1192.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

III. COMPENSATION FOR INJURIES TO EMPLOYEES

An Act To provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes.

[*Act of Sept. 7, 1916, ch. 458, 39 Stat. L. 742.*]

[SEC. 1.] [Compensation for government employees injured while in performance of duties.] That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death. [*39 Stat. L. 742.*]

By the Act of March 4, 1917, ch. 180, *supra*, p. 428, the President was authorized in cases of national emergency to suspend provisions of law prohibiting more than eight hours' labor in any one day of persons engaged upon work covered by contracts with the United States.

SEC. 2. [First three days of disability — exclusion of compensation.] That during the first three days of disability the employee shall not be entitled to compensation except as provided in section nine. No compensation shall at any time be paid for such period. [*39 Stat. L. 743.*]

SEC. 3. [Total disability — compensation.] That if the disability is total the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of his monthly pay, except as hereinafter provided. [*39 Stat. L. 743.*]

SEC. 4. [Partial disability — compensation — affidavit.] That if the disability is partial the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of such partial disability. The commission may, from time to time, require a partially disabled employee to make an affidavit as to the wages which he is then receiving. In such affidavit the employee shall include a statement of the value of housing, board, lodging, and other advantages which are received from the employer as a part of his remuneration and which can be estimated in money. If the employee, when required, fails to make such affidavit, he shall not be entitled to any compensation while such failure continues, and the period of such failure shall be deducted from the period during which compensation is payable to him. [*39 Stat. L. 743.*]

SEC. 5. [Partially disabled employee — duty to accept suitable work.] That if a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation. [*39 Stat. L. 743.*]

SEC. 6. [Monthly compensation — minors — apprentices — decrease for old age.] That the monthly compensation for total disability shall not be more than \$66.67 nor less than \$33.33, unless the employee's monthly pay is less than \$33.33, in which case his monthly compensation shall be the full amount of his monthly pay. The monthly compensation for partial disability shall not be more than \$66.67. In the case of persons who at the time of the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the commission shall, on any review after the time when the monthly wage-earning capacity of such persons would probably, but for the injury, have increased, award compensation based on such probable monthly wage-earning capacity. The commission may, on any review after the time when the monthly wage-earning capacity of the disabled employee would probably, irrespective of the injury, have decreased on account of old age, award compensation based on such probable monthly wage-earning capacity. [39 Stat. L. 743.]

SEC. 7. [Receipt of compensation as preventing acceptance of other remuneration from government.] That as long as the employee is in receipt of compensation under this Act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States. [39 Stat. L. 743.]

SEC. 8. [Annual or sick leave — beginning of compensation.] That if at the time the disability begins the employee has annual or sick leave to his credit he may, subject to the approval of the head of the department, use such leave until it is exhausted, in which case his compensation shall begin on the fourth day of disability after the annual or sick leave has ceased. [39 Stat. L. 743.]

SEC. 9. [Medical, etc., services and supplies — furnishing by government — transportation for treatment.] That immediately after an injury sustained by an employee while in the performance of his duty, whether or not disability has arisen, and for a reasonable time thereafter, the United States shall furnish to such employee reasonable medical, surgical, and hospital services and supplies unless he refuses to accept them. Such services and supplies shall be furnished by United States medical officers and hospitals, but where this is not practicable shall be furnished by private physicians and hospitals designated or approved by the commission and paid for from the employees' compensation fund. If necessary for the securing of proper medical, surgical, and hospital treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund. [39 Stat. L. 744.]

SEC. 10. [Death resulting from injury — compensation to dependents — amount — conditions.] That if death results from the injury within six years the United States shall pay to the following persons for the following

periods a monthly compensation equal to the following percentages of the deceased employee's monthly pay, subject to the modification that no compensation shall be paid where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury:

(A) To the widow, if there is no child, thirty-five per centum. This compensation shall be paid until her death or marriage.

(B) To the widower, if there is no child, thirty-five per centum if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage.

(C) To the widow or widower, if there is a child, the compensation payable under clause (A) or clause (B) and in addition thereto ten per centum for each child, not to exceed a total of sixty-six and two-thirds per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support, becomes capable of self-support.

(D) To the children, if there is no widow or widower, twenty-five per centum for one child and ten per centum additional for each additional child, not to exceed a total of sixty-six and two-thirds per centum, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian.

(E) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per centum; if both are wholly dependent, twenty per centum to each; if one is or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there is no widow, widower, or child. If there is a widow, widower, or child, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of sixty-six and two-thirds per centum.

(F) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per centum to such dependent; if more than one are wholly dependent, thirty per centum, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more partly dependent, ten per centum divided among such dependents share and share alike.

The above percentages shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of sixty-six and two-thirds per centum.

(G) The compensation of each beneficiary under clauses (E) and (F) shall be paid for a period of eight years from the time of the death, unless before that time he, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian.

(H) As used in this section, the term "child" includes stepchildren, adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. The term "parent" includes stepparents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption" as used in this clause include only legal adoption prior to the time of the injury.

(I) Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensations at the time of the decedent's death.

(J) In case there are two or more classes of persons entitled to compensation under this section and the apportionment of such compensation, above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case.

(K) In computing compensation under this section, the monthly pay shall be considered not to be more than \$100 nor less than \$50, but the total monthly compensation shall not exceed the monthly pay computed as provided in section twelve.

(L) If any person entitled to compensation under this section, whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage he shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. [39 Stat. L. 745.]

SEC. 11. [Burial expenses.] That if death results from the injury within six years the United States shall pay to the personal representative of the deceased employee burial expenses not to exceed \$100, in the discretion of the commission. In the case of an employee whose home is within the United States, if his death occurs away from his home office or outside of the United States, and if so desired by his relatives, the body shall, in the discretion of the commission, be embalmed and transported in a hermetically sealed casket to the home of the employee. Such burial expenses shall not be paid and such transportation shall not be furnished where the

death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury. [39 Stat. L. 745.]

SEC. 12. [Computation of monthly pay.] That in computing the monthly pay the usual practice of the service in which the employee was employed shall be followed. Subsistence and the value of quarters furnished an employee shall be included as part of the pay, but overtime pay shall not be taken into account. [39 Stat. L. 746.]

SEC. 13. [Determination of employee's wage-earning capacity after partial disability.] That in the determination of the employee's monthly wage-earning capacity after the beginning of partial disability, the value of housing, board, lodging, and other advantages which are received from his employer as a part of his remuneration and which can be estimated in money shall be taken into account. [39 Stat. L. 746.]

SEC. 14. [Lump sum compensation — computation.] That in cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than \$5 a month, or if the beneficiary is or is about to become a nonresident of the United States, or if the commission determines that it is for the best interests of the beneficiary, the liability of the United States for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in the case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed sixty months' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. [39 Stat. L. 746.]

SEC. 15. [Notice of injury — necessity.] That every employee injured in the performance of his duty, or some one on his behalf, shall, within forty-eight hours after the injury, give written notice thereof to the immediate superior of the employee. Such notice shall be given by delivering it personally or by depositing it properly stamped and addressed in the mail. [39 Stat. L. 746.]

SEC. 16. [Form of notice.] That the notice shall state the name and address of the employee, the year, month, day, and hour when and the particular locality where the injury occurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice. [39 Stat. L. 746.]

SEC. 17. [Failure to give notice within time specified — effect.] That unless notice is given within the time specified or unless the immediate superior has actual knowledge of the injury, no compensation shall be

allowed, but for any reasonable cause shown, the commission may allow compensation if the notice is filed within one year after the injury. [39 Stat. L. 746.]

SEC. 18. [Claim for compensation—necessity.] That no compensation under this Act shall be allowed to any person, except as provided in section thirty-eight, unless he or some one on his behalf shall, within the time specified in section twenty, make a written claim therefor. Such claim shall be made by delivering it at the office of the commission or to any commissioner or to any person whom the commission may by regulation designate, or by depositing it in the mail properly stamped and addressed to the commission or to any person whom the commission may by regulation designate. [39 Stat. L. 746.]

SEC. 19. [Form of claim.] That every claim shall be made on forms to be furnished by the commission and shall contain all the information required by the commission. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the commission may waive the provisions of this section. [39 Stat. L. 746.]

SEC. 20. [Time of making claim.] That all original claims for compensation for disability shall be made within sixty days after the injury. All original claims for compensation for death shall be made within one year after the death. For any reasonable cause shown the commission may allow original claims for compensation for disability to be made at any time within one year. [39 Stat. L. 747.]

SEC. 21. [Submission of injured employee to examination by physician, etc.—refusal to submit to examination.] That after the injury the employee shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the commission, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this Act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him. [39 Stat. L. 747.]

SEC. 22. [Disagreement between physicians making examination.] That in case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the

commission shall appoint a third physician, duly qualified, who shall make an examination. [39 Stat. L. 747.]

SEC. 23. [Fees for examinations.] The fees for examinations made on the part of the United States under sections twenty-one and twenty-two by physicians who are not already in the service of the United [sic] States shall be fixed by the commission. Such fees, and any sum payable to the employee under section twenty-one, shall be paid out of the appropriation for the work of the commission. [39 Stat. L. 747.]

SEC. 24. [Report of injury by immediate superior.] That immediately after an injury to an employee resulting in his death or in his probable disability, his immediate superior shall make a report to the commission containing such information as the commission may require, and shall thereafter make such supplementary reports as the commission may require. [39 Stat. L. 747.]

SEC. 25. [Assignment of claim for compensation.] That any assignment of a claim for compensation under this Act shall be void and all compensation and claims therefor shall be exempt from all claims of creditors. [39 Stat. L. 747.]

SEC. 26. [Liability of third person for injury to government employee — assignment of claim to government.] If an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the commission may require said beneficiary to prosecute said action in his own name.

If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the commission, he shall not be entitled to any compensation under this Act.

The cause of action when assigned to the United States may be prosecuted or compromised by the commission, and if the commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deducting the amount of any compensation already paid to the beneficiary and the expenses of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury. [39 Stat. L. 747.]

SEC. 27. [Money, etc., received from third person liable for injury — disposition.] That if an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in some person other than the United States to pay damages therefor, and a beneficiary entitled to compensation from the United States for such

injury or death receives, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such beneficiary shall, after deducting the costs of suit and a reasonable attorney's fee, apply the money or other property so received in the following manner:

(A) If his compensation has been paid in whole or in part, he shall refund to the United States the amount of compensation which has been paid by the United States and credit any surplus upon future payments of compensation payable to him on account of the same injury. Any amount so refunded to the United States shall be placed to the credit of the employees' compensation fund.

(B) If no compensation has been paid to him by the United States, he shall credit the money or other property so received upon any compensation payable to him by the United States on account of the same injury. [39 Stat. L. 748.]

SEC. 28. [United States Employees' Compensation Commission — creation — membership — term — salary — offices.] That a commission is hereby created, to be known as the United States Employees' Compensation Commission, and to be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms, the commissioner then appointed shall be appointed for a period of six years. Each commissioner shall receive a salary of \$4,000 a year. The principal office of said commission shall be in Washington, District of Columbia, but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this Act. [39 Stat. L. 748.]

SEC. 28a. [Abolishment of similar commissions and bureaus — transfer of clerks, etc.] Upon the organization of said commission and notification to the heads of all executive departments that the commission is ready to take up the work devolved upon it by this Act, all commissions and independent bureaus, by or in which payments for compensation are now provided, together with the adjustment and settlement of such claims, shall cease and determine, and such executive departments, commissions and independent bureaus shall transfer all pending claims to said commission to be administered by it. The said commission may obtain, in all cases, in addition to the reports provided in section twenty-four, such information and such reports from employees of the departments as may be agreed upon by the commission and the heads of the respective departments. All clerks and employees now exclusively engaged in carrying on said work in the various executive departments, commissions, and independent bureaus, shall be transferred to, and become employees of, the commission at their present grades and salaries. [39 Stat. L. 748.]

SEC. 29. [Authority of commission—subpoenas—examination of witnesses.] That the commission, or any commissioner by authority of the commission, shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths, and to examine witnesses, upon any matter within the jurisdiction of the commission. [39 Stat. L. 748.]

SEC. 30. [Assistants—clerks—employees.] That the commission shall have such assistants, clerks, and other employees as may be from time to time provided by Congress. They shall be appointed from lists of eligibles to be supplied by the Civil Service Commission, and in accordance with the civil-service law. [39 Stat. L. 748.]

SEC. 31. [Annual estimates of appropriations.] That the commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the commission. [39 Stat. L. 749.]

SEC. 32. [Rules and regulations.] That the commission is authorized to make necessary rules and regulations for the enforcement of this Act, and shall decide all questions arising under this Act. [39 Stat. L. 749.]

SEC. 33. [Report to Congress of work of commission.] That the commission shall make to Congress at the beginning of each regular session a report of its work for the preceding fiscal year, including a detailed statement of appropriations and expenditures, a detailed statement showing receipts of and expenditures from the employees' compensation fund, and its recommendations for legislation. [39 Stat. L. 749.]

SEC. 34. [Appropriation for expenses.] That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$50,000 for the work of the commission, including salaries of the commissioners and of such assistants, clerks, and other employees as the commission may deem necessary, and for traveling expenses, expenses of medical examinations under sections twenty-one and twenty-two, reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, rent and equipment of offices, purchase of books, stationery, and other supplies, printing and binding to be done at the Government Printing Office, and other necessary expenses. [39 Stat. L. 749.]

SEC. 35. [Employees' compensation fund.] That there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is hereby authorized to be permanently appropriated for the

payment of the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine, and the transportation and burial expenses provided by sections nine and eleven. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund. [39 Stat. L. 749.]

SEC. 36. [Award of commission on investigation of claim for compensation.] The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for or against payment of the compensation provided for in this Act. Compensation when awarded shall be paid from the employees' compensation fund. [39 Stat. L. 749.]

SEC. 37. [Review of award.] That if the original claim for compensation has been made within the time specified in section twenty, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation. [39 Stat. L. 749.]

SEC. 38. [Cancellation of award — mistake of law or fact.] That if any compensation is paid under a mistake of law or of fact, the commission shall immediately cancel any award under which such compensation has been paid and shall recover, as far as practicable, any amount which has been so paid. Any amount so recovered shall be placed to the credit of the employees' compensation fund. [39 Stat. L. 749.]

SEC. 39. [False affidavits — perjury.] That whoever makes, in any affidavit required under section four or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. [39 Stat. L. 749.]

SEC. 40. [Definition and construction of language of Act.] That wherever used in this Act —

The singular includes the plural and the masculine includes the feminine.

The term "employee" includes all civil employees of the United States and of the Panama Railroad Company.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section twenty-eight.

The term "physician" includes surgeons.

The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury. [39 Stat. L. 750.]

SEC. 41. [Repeal of inconsistent Acts—injuries under Panama Railroad Company.] That all Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided, however,* That for injuries occurring prior to the passage of this Act compensation shall be paid under the law in force at the time of the passage of this Act: *And provided further,* That if an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in the Panama Railroad Company to pay damages therefor under the laws of any State, Territory, or possession of the United States or of the District of Columbia or of any foreign country, no compensation shall be payable until the person entitled to compensation releases to the Panama Railroad Company any right of action which he may have to enforce such liability of the Panama Railroad Company, or until he assigns to the United States any right which he may have to share in any money or other property received in satisfaction of such liability of the Panama Railroad Company. [39 Stat. L. 750.]

SEC. 42. [Administration of Act in Canal Zone and Alaska — performance of duties of commission by others.] That the President may, from time to time, transfer the administration of this Act so far as employees of the Panama Canal and of the Panama Railroad Company are concerned to the governor of the Panama Canal, and so far as employees of the Alaskan Engineering Commission are concerned to the chairman of that commission, in which cases the words "commission" and "its" wherever they appear in this Act shall, so far as necessary to give effect to such transfer, be read "governor of the Panama Canal" or "chairman of the Alaskan Engineering Commission," as the case may be, and "his"; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for the Panama Canal or for the Alaskan Engineering Commission or out of funds of the Panama Railroad, as the case may be, instead of out of the appropriation for the work of the commission.

In the case of compensation to employees of the Panama Canal or of the Panama Railroad Company for temporary disability, either total or partial, the President may authorize the governor of the Panama Canal to waive, at his discretion, the making of the claim required by section eighteen. In the case of alien employees of the Panama Canal or of the Panama Railroad Company, or of any class or classes of them, the President may remove or modify the minimum limit established by section six on the monthly compensation for disability and the minimum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed. The President may authorize the governor of the Panama Canal and the chairman of the Alaskan Engineering Commission to pay the compensation provided by this Act, including the medical, surgical,

and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal and for the Alaskan Engineering Commission, such appropriations to be reimbursed for such payments by the transfer of funds from the employees' compensation fund. [39 Stat. L. 750.]

IV. HOUSING FOR EMPLOYEES

An Act To authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise acquire, and to sell or otherwise dispose of improved or unimproved land, houses, buildings, and for other purposes.

[Act of March 1, 1918, ch. —, — Stat. L. —.]

[SEC. 1.] [United States Shipping Board Emergency Fleet Corporation — housing shipyard employees — acquisition and disposition of property — loans.] That the United States Shipping Board Emergency Fleet Corporation is hereby authorized and empowered within the limits of the amounts herein authorized —

(a) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any improved or unimproved land or any interest therein suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships are being constructed for the United States.

(b) To construct on such land for the use of such employees and their families houses and all other necessary or convenient facilities, upon such conditions and at such price as may be determined by it, and to sell, lease, or exchange such houses, land, and facilities upon such terms and conditions as it may determine.

(c) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any houses or other buildings for the use of such employees and their families, together with the land on which the same are erected, or any interest therein, all necessary and proper fixtures and furnishings therefor, and all necessary and convenient facilities incidental thereto; to manage, repair, sell, lease, or exchange such lands, houses, buildings, fixtures, furnishings and facilities upon such terms and conditions as it may determine to carry out the purposes of this Act.

(d) To make loans to persons, firms, or corporations in such manner upon such terms and security, and for such time not exceeding ten years, as it may determine to provide houses and facilities for the employees and the families of employees of such shipyards. [— Stat. L. —.]

For provisions relating to the United States Shipping Board Fleet Corporation, see SHIPPING AND NAVIGATION, *post*.

[SEC. 2.] [Compensation for property acquired.] Whenever said United States Shipping Board Emergency Fleet Corporation shall acquire by requisition or condemnation such property or any interest therein, it shall

determine and make just compensation therefor, and if the amount thereof so determined is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make such an amount as will be just compensation for the property or interest therein so taken, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

[SEC. 3.] [**Immediate possession of property acquired.**] That whenever the said United States Shipping Board Emergency Fleet Corporation shall requisition any property or rights, or upon the filing of a petition for condemnation hereunder, immediate possession may be taken by it of such land, houses, or other property, rights, and facilities, to the extent of the interests to be acquired therein, and the same may be immediately occupied and used, and the provisions of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended as to all land acquired hereunder. [— *Stat. L.* —.]

For R. S. sec. 355, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

[SEC. 4.] [**Period of authority granted herein.**] The power to acquire property by purchase, lease, requisition, or condemnation, or to construct houses, or other buildings, and to make loans, or otherwise extend aid as herein granted shall cease with the termination of the present war with Germany. The date of the conclusion of the war shall be declared by proclamation of the President. [— *Stat. L.* —.]

[SEC. 5.] [**Definitions.**] The word "person" used herein shall include a trustee, firm, or corporation. The word "shipyard" shall include any factory, workshop, warehouse, engine works, buildings, or grounds used for manufacturing, assembling, construction, or other process in shipyards and dockyards and discharging terminals, and other facilities connected therewith, now or hereafter used in connection with shipbuilding. [— *Stat. L.* —.]

[SEC. 6.] [**Expenditure authorized — contracts — terms and conditions — report to Congress.**] That for the purpose of carrying out the provisions of this Act the expenditure of \$50,000,000 is hereby authorized, and in executing the authority granted by this Act, the said United States Shipping Board Emergency Fleet Corporation shall not expend or obligate the United States to expend more than the said sum, nor shall any contract for construction be entered into which provides that the compensation of

the contractor shall be the cost of construction plus a percentage thereof for profit, unless such contract shall also fix the reasonable cost of such construction as determined by the United States Shipping Board Emergency Fleet Corporation and provide that upon any increase in cost above the reasonable cost so fixed by such board, the percentage of profit shall decrease as the cost increases in accordance with a rate to be fixed by said board and expressed in the contract. No contract shall be let without the approval of the United States Shipping Board Emergency Fleet Corporation: *Provided, however*, That nothing herein contained shall be construed to prevent said board from contracting for the payment of premiums or bonuses for the speedy completion of the work contracted for: *Provided further*, That the United States Shipping Board Emergency Fleet Corporation shall report to Congress on the first Monday in December of each year the names of all persons or corporations with whom it has made contracts and of such subcontractors as may be employed in furtherance of this Act, including a statement of the purposes and amounts thereof, together with a detailed statement of all expenditures by contract or otherwise for land, buildings, material, labor, salaries, commissions, demurrage, or other charges in excess of \$10,000. [— *Stat. L.* —.]

An Act To authorize the President to provide housing for war needs.

[*Act of May 16, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Housing for war needs — authority of President to take property.**] That the President, for the purposes of providing housing, local transportation and other general community utilities for such industrial workers as are engaged in arsenals and navy yards of the United States and in industries connected with and essential to the national defense, and their families, and also employees of the United States whose duties require them to reside in the District of Columbia, and whose services are essential to war needs, and their families, only during the continuation of the existing war, is hereby authorized and empowered, within the limits of the amounts herein authorized —

(a) To purchase, acquire by lease, construct, requisition, or acquire by condemnation or by gift such houses, buildings, furnishings, improvements, local transportation and other general community utilities and parts thereof as he may determine to be necessary for the proper conduct of the existing war.

(b) To purchase, lease, requisition, or acquire by condemnation or by gift any improved or unimproved land, or any right, title, or interest therein on which such houses, buildings, improvements, local transportation and other general community utilities and parts thereof have been or may be constructed: *Provided*, That colleges, museums, libraries, State or municipal buildings, and the furnishings in private dwellings shall not be acquired except by contract, nor shall any occupied dwelling or place of abode be taken under the powers in this Act given except by contract unless the necessity thereof shall be determined by a judge of the circuit or district court of the United States exercising jurisdiction in the locality on petition

setting forth the reason and necessity for such taking; the hearing on such petition shall be upon notice to the owner and occupant of such dwelling, and the determination of such judge shall be final, but in no event shall any occupied private dwelling house be taken except by contract unless such dwelling be upon lands desired for the construction of a Government structure: *Provided further*, That no existing limitation upon the right of any person to make a contract with the United States shall apply to owners whose property the President determines is necessary for Government purposes and desires to either lease or purchase by contract under this or any other Act authorizing the President to acquire property by lease or purchase.

(c) To equip, manage, maintain, alter, rent, lease, exchange, sell, and convey such lands, or any right, title, or interest therein, houses, buildings, improvements, local transportation and other general community utilities, parts thereof, and equipment upon such terms and conditions as he may determine: *Provided*, That no sale and conveyance shall be made hereunder on credit without reserving a first lien on such property for the unpaid purchase money: *Provided further*, That in no case shall any property hereby acquired be given away, nor shall rents be furnished free, but the rental charges shall be reasonable and just as between the employees and the Government.

(d) To aid in providing, equipping, managing, and maintaining houses, buildings, improvements, local transportation and other general community utilities by loan or otherwise to such person or persons and upon such terms and conditions as he may determine: *Provided*, That no loan shall be made at a less rate of interest than five per centum per annum, and such loan shall be properly secured by lien, mortgage, or otherwise: *And provided further*, That no loan shall be made and no house or money given under this Act to any person not an American citizen.

(e) To take possession of, alter, repair, improve, and suitably arrange for living purposes to be used under the terms of this Act all houses on square six hundred and thirty-three except the Maltby Building, owned by the United States, together with any other houses in the District of Columbia owned by the Government and not now occupied. The President shall, in the construction of buildings in the District of Columbia, make use of any lands owned by the Government of the United States deemed by him to be suitable for the purpose and which have not heretofore been dedicated by Act of Congress for specific buildings.

The President may exercise any power or discretion herein granted, and may enter into any arrangement or contract incidental thereto, through such agency or agencies as he may create or designate: *Provided*, That houses erected by the Government under the authority of this Act shall be of only a temporary character except where the interests of the Government will be best subserved by the erection of buildings of a permanent character: *Provided further*, That whenever it is practicable to use any part of the office or field force of the Office of the Supervising Architect of the Treasury Department in or about any of the work contemplated by this Act, the President shall do so. [— *Stat. L.* —.]

SEC. 2. [Compensation for property taken.] That whenever the President shall purchase, lease, requisition, or acquire by condemnation or by

gift such land or right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation and other general community utilities, and parts thereof, he shall make just compensation therefor, to be determined by him, and if the amount thereof so determined is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as, added to such seventy-five per centum, will make up such amount as will be just compensation therefor in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 3. [Possession of property pending condemnation proceedings.] That upon the requisition of or the filing of a petition for the condemnation hereunder of such land, or any right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation, and other general community utilities, and parts thereof, immediate possession thereof may be taken to the extent of the interest to be acquired and the same may be occupied, occupant being given ten days' notice in which to vacate, and used, and the provisions of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended as to all real estate acquired hereunder. [— *Stat. L.* —.]

For R. S. sec. 355, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

SEC. 4. [“ Person ” defined.] That the word “ person ” used herein shall include any person, trustee, firm, or corporation. [— *Stat. L.* —.]

SEC. 5. [Power and authority granted herein how long effective.] That the power and authority granted herein shall cease with the termination of the present war, except the power and authority to care for, sell, or rent such property as remains undisposed of and to conclude and execute contracts for the sale of property made during the war. Such property shall be sold as soon after the conclusion of the war as it can be advantageously done: *Provided*, That before any sale is consummated the same must be authorized by Congress. [— *Stat. L.* —.]

SEC. 6. [Report to Congress.] That at the beginning of each session of Congress the President shall make to Congress a full and detailed report covering all of the transactions with relation to the subject matter of this Act, describing each parcel of land purchased, leased, or otherwise acquired, the improvements made thereon, together with the amount of money spent in connection therewith and the disposition of the same; descriptions of all parcels of property sold, to whom, the terms of sale, and the status of the

title at the time of the making of such report; description of each piece of property purchased under the terms of this Act and still owned by the Government and the estimated value; a list showing the names of all persons who have been employed in any capacity to aid in carrying out the provisions of this Act, the service rendered by each and the amount of compensation, including fees, commissions, allowances, and traveling expenses paid to each, and a full, detailed, itemized statement showing each and every transaction in the execution of the trust herein created, and immediately after the declaration of peace the President shall make a final report to Congress covering in detail all the operations and transactions, under and by virtue of the terms of this Act. [— *Stat. L.* —.]

SEC. 7. [Contracts — conditions affecting.] That no work to be done or contract to be made under or by authority of any provision of this Act shall be done or made on or under a percentage or cost-plus percentage basis, nor shall any contract be let involving more than \$1,000 until at least three responsible competing contractors shall have been notified and considered in connection with such contract, and all contracts to be awarded to the lowest responsible bidder, the Government reserving the right to reject any and all bids. [— *Stat. L.* —, as amended by — *Stat. L.* —.]

This section was amended to read as here given by the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —. As originally enacted it was as follows:

"SEC. 7. That no work to be done or contract to be made under or by authority of any provision of this Act shall be done or made on or under a percentage or cost-plus percentage basis, nor shall any contract be let at least three responsible competing contractors shall have been notified and considered in connection with such contract, and all contracts to be awarded to the lowest responsible bidder, the Government reserving the right to reject any and all bids."

SEC. 8. [Appropriations — expenditures.] That for carrying out the provisions of this Act and for the administration thereof the sum of \$60,000,000, or so much thereof as may be necessary, is hereby authorized: *Provided*, That \$10,000,000, or so much thereof as may be necessary, of the amount hereby authorized shall be used only to build or acquire, as herein provided, housing accommodations within the District of Columbia for such Government employees as can not be used as advantageously in other cities in the service of the Government, of which the sum of \$75,000, or so much thereof as shall be necessary therefor, shall be used by the Superintendent of the United States Capitol Buildings and Grounds to convert the building known as the Maltby Building into an apartment house or for office purposes: *Provided further*, That the expenditure in the District of Columbia shall be made with a view to caring for the alley population of the District when the war is over, so far as it can be done without interfering with war housing purposes. [— *Stat. L.* —.]

This section is affected by the Deficiency Appropriation Act of July 8, 1918, ch. —, § 1, —. *Stat. L.* —, which contains a provision as follows: "The authorization fixed by section eight of the Act entitled 'An Act to authorize the President to provide housing for war needs,' approved May sixteenth, nineteen hundred and eighteen, is increased from \$60,000,000 to \$100,000,000, and there is appropriated for the purposes thereof, including rental of offices in the District of Columbia, contingent and miscellaneous expenses, printing and binding, and personal services in the District of Columbia and elsewhere, \$40,000,000, to be expended in accordance with the authority and under the conditions prescribed in the said Act as amended by the Deficiency Appropriation Act approved June fourth, nineteen hundred and eighteen and to continue available during the fiscal year nineteen hundred and nineteen."

[Creation of corporation to carry out purpose of "Housing Act."]
 The President, if in his judgment such action is deemed necessary or advantageous, may authorize the creation of a corporation or corporations for the purpose of carrying out the Act entitled "An act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, such corporation or corporations to have or obtain all powers necessary or appropriate therefor. The total capital stock of the corporation or corporations authorized hereunder shall not exceed \$60,000,000: *Provided*, That where such corporation or corporations are created by authority of the President, representatives appointed by the President, or by such agency as he may designate to carry out the purposes of the said Act, shall subscribe to, own, and vote the capital stock thereof for and on behalf of the United States, and shall do all other things in regard thereto necessary to protect the interests of the United States and to carry out the provisions of the said Act: *Provided further*, That section six hundred and five of the Code of the District of Columbia prohibiting a corporation from buying, selling or dealing in real estate shall not apply to such corporation or corporations so created or designated, with respect to buying, selling or dealing in real estate in furtherance of the provisions of the said Act: *Provided further*, That the Act entitled "An Act to amend section five hundred and fifty-two of the Code of Laws for the District of Columbia, relating to incorporations," approved February fourth, nineteen hundred and five, shall not apply to any corporation or corporations created under the authority contained in this paragraph.

All moneys received by the United States in carrying out the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, may be used as a revolving fund until June thirtieth, nineteen hundred and nineteen, for further carrying out the purposes of the said Act. [— *Stat. L.* —.]

This is from the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —.

V. WAR EMERGENCY SERVICES

[SEC. 1.] [War emergency services — wages — appropriations for payment.] * * * That no money now or hereafter appropriated for the payment of wages not fixed by statute shall be available to pay wages in excess of the standard determined upon by the War Labor Policies Board. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

LABOR DEPARTMENT

Act of July 3, 1918, ch. —, 447.

Sec. 1. Advertisements for Proposals — Exceptions, 447.

[SEC. 1.] [Advertisements for proposals — exceptions.] * * * During the present war section thirty-seven hundred and nine of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Department of Labor when the aggregate amount involved does not exceed the sum of \$25. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

For R. S. sec. 3709, relating to advertisements for proposals for contracts for supplies and services, see 6 Fed. Stat. Ann. 93; 8 Fed. Stat. Ann. (2d ed.) 336.

LEPROSY

See HEALTH AND QUARANTINE

LIBERTY BONDS

See PUBLIC DEBT

LIGHTS AND BUOYS

Act of Aug. 29, 1916, ch. 417, 448.

Transfer of Vessels, etc., to Army or Navy in Emergencies — Personnel Subject to Army or Navy Rules During Transfer, 448.

Regulations for Service in Time of War, 448.

Act of Aug. 28, 1916, ch. 414, 448.

Sec. 2. Lighthouse Service — Exchange of Right of Way, 448

5. Light Keepers — Medical Relief, 449.

Act of June 20, 1918, ch. —, 449.

Sec. 2. Teachers — Payment of Expenses, 449.

3. Keepers and Assistant Keepers — Ration — Commutation, 449.

4. Publications — Sale, 449.

5. Post Lantern Lights, etc. — Establishment, 449.

6. Officers and Employees — Retirement — Pay, 450.

7. Superintendents — Assignment — Salary — Lighthouse Inspectors Transferred to Positions of Superintendents — Mississippi River District, 450.

8. Compensation of Lighthouse Keepers — R. S. 4673 Amended, 450.

[Transfer of vessels, etc., to Army or Navy in emergencies — personnel subject to Army or Navy rules during transfer.] The President is hereby authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of the Navy Department, or of the War Department, such vessels, equipment, stations, and personnel of the Lighthouse Service as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided*, That such vessels, equipment, stations, and personnel shall be returned to the Lighthouse Service when such national emergency ceases in the opinion of the President, and nothing in this Act shall be construed as transferring the Lighthouse Service or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further*, That any of the personnel of the Lighthouse Service who may be transferred as herein provided shall, while under the jurisdiction of the Navy Department or War Department, be subject to the laws, regulations, and orders for the government of the Navy or Army, as the case may be, in so far as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law. [39 Stat. L. 602.]

This and the following paragraph of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Regulations for service in time of war.] The Secretary of the Navy, the Secretary of War, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Lighthouse Service in time of war, and for the cooperation of that service with the Navy and War Departments in time of peace in preparation for its duties in war, and this may include arrangements for a direct line of communication between the officers or bureaus of the Navy and War Departments and the Bureau of Lighthouses to provide for immediate action on all communications from these departments. [39 Stat. L. 602.]

See the notes to the preceding paragraph of the text.

SEC. 2. [Lighthouse service — exchange of right of way.] That hereafter the Secretary of Commerce is authorized, whenever he shall deem it advisable, to exchange any right of way of the United States in connection with lands pertaining to the Lighthouse Service for such other right of way as may be advantageous to the service, under such terms and conditions as he may deem to be for the best interests of the Government; and in case any expenses, not exceeding the sum of \$500, are incurred by the United States in making such exchange, the same shall be payable from the appropriation "General expenses, Lighthouse Service," for the fiscal year during which such exchange shall be effected. [39 Stat. L. 538.]

The foregoing section 2, and the following section 5, are from an Act of Aug. 28, 1916, ch. 414, entitled "An Act To authorize aids to navigation and for other works in the Lighthouse Service, and for other purposes."

Sections 1, 3, 4, and 6 of this Act, being of a local or temporary nature only, are omitted.

SEC. 5. [Light keepers — medical relief.] That hereafter light keepers and assistant light keepers of the Lighthouse Service shall be entitled to medical relief without charge at hospitals and other stations of the Public Health Service under the rules and regulations governing the care of seamen of the merchant marine: *Provided*, That this benefit shall not apply to any keeper or assistant keeper who receives an original appointment after the passage of this Act, unless the applicant passes a physical examination in accordance with rules approved by the Secretary of Commerce and the Secretary of the Treasury. [39 Stat. L. 538.]

See the note to the preceding section 2 of this Act.

SEC. 2. [Teachers — payment of expenses.] That hereafter the appropriation, "General expenses, Lighthouse Service," shall be available, under regulations prescribed by the Secretary of Commerce, for the payment of traveling and subsistence expenses of teachers while actually employed by States or private persons to instruct the children of keepers of lighthouses. [— Stat. L. —.]

The foregoing section 2 and the following sections 3-8 are from the Act of June 20, 1918, ch. —, entitled "An Act To authorize aids to navigation and for other works in the Lighthouse Service, and for other purposes."

Section 1 of this Act made appropriations and is omitted as local only.

SEC. 3. [Keepers and assistant keepers — ration — commutation.] That hereafter every lighthouse keeper and assistant lighthouse keeper in the Lighthouse Service of the United States shall be entitled to receive one ration per day, or, in the discretion of the Commissioner of Lighthouses, commutation therefor at the rate of 45 cents per ration. [— Stat. L. —.]

See the note to the preceding section 2 of this Act.

A provision similar to this section, but without the word "hereafter" was contained in the Sundry Civil Appropriation Act of July 1, 1918, ch. —, § 1, — Stat. L. —, as follows: "Every lighthouse keeper and assistant lighthouse keeper in the Lighthouse Service of the United States shall be entitled to receive one ration per day, or, in the discretion of the Commissioner of Lighthouses, commutation therefor at the rate of 45 cents per ration."

SEC. 4. [Publications — sale.] That hereafter the Secretary of Commerce is authorized to provide under regulations to be prescribed by him, for the sale of publications of the Bureau of Lighthouses and the Lighthouse Service, including the allowance of a commission for such sales. [— Stat. L. —.]

See the note to section 2 of this Act, *supra*, this page.

SEC. 5. [Post lantern lights, etc.— establishment.] That hereafter post lantern lights and other aids to navigation may be established and maintained, in the discretion of the Commissioner of Lighthouses, out of the annual appropriations for the Lighthouse Service, on Lakes Union and Washington, in the State of Washington. [— Stat. L. —.]

See the note to section 2 of this Act, *supra*, this page.

SEC. 6. [Officers and employees — retirement — pay.] That hereafter all officers and employees engaged in the field service or on vessels of the Lighthouse Service, except persons continuously employed in district offices or shops, who shall have reached the age of sixty-five years, after having been thirty years in the active service of the Government, may at their option be retired from further performance of duty; and all such officers and employees who shall have reached the age of seventy years shall be compulsorily retired from further performance of duty: *Provided*, That the annual compensation of persons so retired shall be a sum equal to one-fortieth of the average annual pay received for the last five years of service for each year of active service in the Lighthouse Service or in a department or branch of the Government having a retirement system, not to exceed in any case thirty-fortieths of such average annual pay received: *Provided further*, That such retirement pay shall not include any amount on account of subsistence or other allowance. [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

SEC. 7. [Superintendents — assignment — salary — lighthouse inspectors transferred to positions of superintendents — Mississippi River district.] That hereafter a superintendent of lighthouses shall be assigned in charge of each lighthouse district at an annual salary of not exceeding \$3,000 each, except that the salary of the third lighthouse district shall remain at \$3,600, as now fixed by law: *Provided*, That officers now designated as lighthouse inspectors shall be transferred to the positions of superintendent of lighthouses herein authorized in lieu of lighthouse inspectors: *Provided further*, That in the districts which include the Mississippi River and its tributaries the President may designate Army engineers to perform the duties of and act as superintendent of lighthouses without additional compensation. [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

SEC. 8. [Compensation of lighthouse keepers — R. S. sec. 4673, amended.] That section forty-six hundred and seventy-three of the Revised Statutes of the United States be amended to read as follows:

“ SEC. 4673. The Secretary of Commerce is authorized to regulate the salaries of the respective keepers of lighthouses in such manner as he deems just and proper, but the whole sum allowed for such salaries shall not exceed an average of \$840 per annum for each keeper; and the authority herein granted to regulate the salaries of keepers of lighthouses shall not be abridged or limited by the provisions of section seven of the general deficiency appropriation Act approved August twenty-sixth, nineteen hundred and twelve, as amended by section four of the legislative, executive, and judicial appropriation Act approved March fourth, nineteen hundred and thirteen.” (United States Statutes at Large, volume thirty-seven, page seven hundred ninety.) [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

For R. S. sec. 4673, amended by the text, see 4 Fed. Stat. Ann. 834; 6 Fed. Stat. Ann. (2d ed.) 319.

For the Deficiencies Appropriation Act of Aug. 26, 1912, ch. 408, § 7, as amended by the Act of March 4, 1913, ch. 142, see 1914 Supp. Fed. Stat. Ann. 140; 3 Fed. Stat. Ann. (2d ed.) 154.

MAIL

See POSTAL SERVICE

MARINE CORPS

See NAVY; POSTAL SERVICE

MARSHALS

See JUDICIARY

MASTER AND SERVANT

See LABOR; RAILROADS

MEDAL OF HONOR ROLL

See PENSIONS

MILITARY ACADEMY

*Act of May 4, 1916, ch. 110, 452.**Sec. 1. Cadets — Increase in Number — Residence Qualifications — Successor to Cadet — Former Act Repealed, 452.**2. Enlisted Men — Appointment to Cadetship, 452.**3. Annual Increments, 452.**Act of Aug. 11, 1916, ch. 314, 453.**Sec. 1. Professors — Rank, Pay and Allowances, 453.**Cadets — Deficiency in Studies — Reexamination — Eligibility of Deficient Cadets to Army Appointments, 453.**Filipino Cadets — Designation, 453.**Chapel Organist and Choirmaster — Public Quarters, 453.**Disbursing Officer — Payments, 454.**Act of June 27, 1918, ch. —, 454.**Battalion Sergeant Major — U. S. Corps of Cadets, 454.**Battalion Sergeant Major — Headquarters Military Academy, 454.**Military Academy Band — R. S. Sec. 1111 Amended, 454.**Supplies — Purchase, 455.**Printing, 455.**Act of July 9, 1918, ch. —, 455.**Cadets — Number — Appointment, 455.*

An Act To provide for an increase in the number of cadets at the United States Military Academy.

[*Act of May 4, 1916, ch. 110, 39 Stat. L. 62.*]

[SEC. 1.] [Cadets — increase in number — residence qualifications — successor to cadet — former act repealed.] That the Corps of Cadets at the United States Military Academy shall hereafter consist of two for each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as “honor schools” upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department. They shall be appointed by the President and shall, with the exception of the eighty appointed from the United States at large, be actual residents of the congressional or Territorial district, or of the District of Columbia, or of the island of Porto Rico, or of the States, respectively, from which they purport to be appointed: *Provided*, That so much of the Act of Congress approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page eleven hundred and twenty-eight), as provides for the admission of a successor to any cadet who shall have finished three years of his course at the academy be, and the same is hereby, repealed: *Provided further*, That the appointment of each member of the present Corps of Cadets is validated and confirmed. [39 Stat. 62.]

For the provisions of the Act of March 4, 1915, ch. 146, § 1, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 147; 6 Fed. Stat. Ann. (2d ed.) 426, note.

This section was in part superseded by the Act of July 9, 1918, ch. —, *infra*, p. 455.

SEC. 2. [Enlisted men — appointment to cadetship.] That the President is hereby authorized to appoint cadets to the United States Military Academy from among enlisted men in number as nearly equal as practicable of the Regular Army and the National Guard between the ages of nineteen and twenty-two years who have served as enlisted men not less than one year, to be selected under such regulations as the President may prescribe: *Provided*, That the total number so selected shall not exceed one hundred and eighty at any one time. [39 Stat. L. 62.]

SEC. 3. [Annual increments.] That, under such regulations as the President shall prescribe, the increase in the number of cadets provided for by this Act shall be divided into four annual increments, which shall be as nearly equal as practicable and be equitably distributed among the sources from which appointments are authorized. [39 Stat. L. 62.]

[SEC. 1.] [Professors — rank, pay and allowances.] * * * That any officer of the United States Army now holding the position of permanent professor at the United States Military Academy who on July first, nineteen hundred and sixteen, should have served not less than thirty-three years in the Army, one-third of which service shall have been as professor and instructor at the Military Academy, shall on that date have the rank, pay, and allowances of a colonel in the Army. [39 Stat. L. 493.]

The provisions of this and the four paragraphs following are from the Military Academy Appropriation Act of Aug. 11, 1916, ch. 314.

[Cadets — deficiency in studies — reexamination — eligibility of deficient cadets to army appointments.] * * * That whenever a cadet shall fail to pass any required examination because deficient in any one subject of instruction he shall have the right to apply for a second examination regarding such subject by making written application therefor to the Academic Board within ten days after being officially notified of such failure. The examination demanded shall be held within sixty days from the date of such application, and if the cadet being otherwise qualified shall pass the same by compliance with the requirements existing at the time of the first examination, he shall be readmitted to the academy: *Provided further*, That this proviso shall apply to those former cadets who failed in not more than two subjects during the current year who shall make application for such examination within twenty days after the approval of this Act: *Provided further*, That any cadet who fails to pass any required examination shall have no more than one reexamination: *And provided further*, That nothing contained in section thirteen hundred and twenty-five of the Revised Statutes shall render ineligible any former cadet honorably discharged from the Military Academy for deficiency in studies, if otherwise qualified, as a civilian candidate for appointment to any vacancy in the grade of second lieutenant under class six of the national-defense Act approved June third, nineteen hundred and sixteen. [39 Stat. L. 493.]

See the note to the preceding paragraph of the text.

For R. S. sec. 1325, mentioned in this paragraph, see 4 Fed. Stat. Ann. 882; 6 Fed. Stat. Ann. (2d ed.) 409.

The provisions relating to the appointments of civilians to vacancies in the grade of second lieutenant under class six of the National Defense Act of June 3, 1916, ch. 134, § 24, mentioned in the text, are given under the title WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

[Filipino cadets — designation.] * * * That the four Filipino cadets authorized by the Act of May twenty-eighth, nineteen hundred and eight, to be designated by the Philippine Commission to receive instructions at the United States Military Academy, shall hereafter be designated by the Governor General of the Philippine Islands. [39 Stat. L. 493.]

See the note to the first paragraph of this Act, *supra*, this page.

For the Act of May 28, 1908, ch. 214, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 441; 6 Fed. Stat. Ann. (2d ed.) 423.

[Chapel organist and choirmaster — public quarters.] * * * That hereafter the chapel organist and choirmaster shall be entitled to public

quarters when available and to the same allowances with respect to fuel and light as those of a second lieutenant when occupying public quarters. [39 Stat. L. 497.]

See the note to the first paragraph of this section, *supra*, p. 453.

[Disbursing officer — payments.] * * * That hereafter in settling transactions between appropriations for the support of the United States Military Academy and other bureaus of the War Department, or between the United States Military Academy and any other executive department of the Government, payment therefor shall be made by the disbursing officer of the United States Military Academy or of the office, bureau, or department concerned. [39 Stat. L. 504.]

See the note to the first paragraph of this section, *supra*, p. 453.

[Battalion sergeant major — United States Corps of Cadets.] * * * For pay of one battalion sergeant major, Infantry, \$864: *Provided*, That the enlisted man in the headquarters, United States Corps of Cadets, performing that duty has the rank, pay, and allowances of that grade: *And provided further*, That if performing the above duties at time of retirement the said enlisted man shall be retired with the rank, pay, and allowances of a retired sergeant major, Infantry. [— Stat. L. —.]

This and the four paragraphs of the text following are from the Military Academy Appropriation Act of June 27, 1918, ch. —.

[Battalion sergeant major — headquarters military academy.] * * * For pay of one battalion sergeant major, Infantry, \$768: *Provided*, That the enlisted man at headquarters, United States Military Academy, performing that duty shall have the rank, pay, and allowance of that grade. [— Stat. L. —.]

See the note to the preceding paragraph of the text.

[Military Academy Band — R. S. sec. 1111 amended.] * * * That section eleven hundred and eleven of the Revised Statutes, as amended, be amended to read as follows: The Military Academy Band shall hereafter consist of one teacher of music, who shall be the leader of the band, one enlisted band sergeant and assistant leader, and of fifty enlisted musicians. The teacher of music shall receive the pay and have the rank of a first lieutenant, not mounted; the enlisted band sergeant and assistant leader shall receive \$972 per year; and of the enlisted musicians of the band, fifteen shall each receive \$51 per month, fifteen shall receive \$44 per month, and the remaining twenty shall each receive \$38 per month, and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of the Regular Army; and the said teacher of music, the band sergeant and assistant leader, and the enlisted musicians of the band shall be entitled to the same benefits in

respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other officers or enlisted men of the Army. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.

For R. S. sec. 1111, amended by the text, see 7 Fed. Stat. Ann. 957; 6 Fed. Stat. Ann. (2d ed.) 412.

[Supplies — purchase.] That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.

This provision has appeared in the Military Academy Appropriation Acts for many years.

[Printing.] * * * Hereafter printing, binding, and blank books required for the use of the United States Military Academy may be done or procured elsewhere than at the Government Printing Office when in the opinion of the Secretary of War such work can be more advantageously done or procured locally, the cost thereof to be paid from the proper appropriation or appropriations made for the Military Academy. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.

[Cadets — number — appointment.] Appointments of cadets, Military Academy: That the Corps of Cadets of the United States Military Academy shall hereafter consist of two from each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty-two from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as "honor schools," upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department, and two of whom shall be selected from persons recommended by the Vice President. They shall be appointed by the President and shall, with exception of the eighty-two appointed from the United States at large, be actual residents of the congressional or territorial district, or of the District of Columbia, or of the Island of Porto Rico, or of the States, respectively, from which they purport to be appointed. [— *Stat. L.* —.]

This paragraph constitutes chapter XXII of the Army Appropriation Act of July 9, 1918, ch. —, and supersedes in part the Act of May 4, 1916, ch. 110, § 1, *supra*, p. 452.

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CROSS-REFERENCE

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

I. NATIONAL GUARD AND UNORGANIZED MILITIA

An Act For making further and more effectual provision for the National defense and for other purposes.

[*Act of June 3, 1916, ch. 134, 39 Stat. L. 166.*]

SEC. 36. [Sergeants for duty with the National Guard.] For the purpose of assisting in the instruction of the personnel and care of property in the hands of the National Guard the Secretary of War is authorized to detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army not to exceed one thousand sergeants for duty with corresponding organizations of the National Guard and not to exceed one hundred sergeants for duty with the disciplinary organizations at the United States

Disciplinary Barracks, who shall be additional to the sergeants authorized by this Act for the corps, companies, troops, batteries, and detachments from which they may be detailed. [39 Stat. L. 189.]

The foregoing section 36 and the following sections 54, 57-113, 115-119 are a part of the National Defense Act of June 3, 1916, ch. 134, cited above. For other sections of this Act see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 54. [Training camps.] The Secretary of War is hereby authorized to maintain, upon military reservations or elsewhere, camps for the military instruction and training of such citizens as may be selected for such instruction and training, upon their application and under such terms of enlistment and regulations as may be prescribed by the Secretary of War; to use, for the purpose of maintaining said camps and imparting military instruction and training thereat, such arms, ammunition, accouterments, equipments, tentage, field equipage, and transportation belonging to the United States as he may deem necessary; to furnish, at the expense of the United States, uniforms, subsistence, transportation by the most usual and direct route within such limits as to territory as the Secretary of War may prescribe, and medical supplies to persons receiving instruction at said camps during the period of their attendance thereat, to authorize such expenditures, from proper Army appropriations, as he may deem necessary for water, fuel, light, temporary structures, not including quarters for officers nor barracks for men, screening, and damages resulting from field exercises, and other expenses incidental to the maintenance of said camps, and the theoretical winter instruction in connection therewith; and to sell to persons receiving instruction at said camps, for cash and at cost price plus ten per centum, quartermaster and ordnance property, the amount of such property sold to any one person to be limited to that which is required for his proper equipment. All moneys arising from such sales shall remain available throughout the fiscal year following that in which the sales are made, for the purpose of that appropriation from which the property sold was authorized to be supplied at the time of the sale. The Secretary of War is authorized further to prescribe the courses of theoretical and practical instruction to be pursued by persons attending the camps authorized by this section; to fix the periods during which such camps shall be maintained; to prescribe rules and regulations for the government thereof; and to employ thereat officers and enlisted men of the Regular Army in such numbers and upon such duties as he may designate. [39 Stat. L. 184.]

This section was in part amended by the provision of the Act of May 12, 1917, given *infra*, p. 458z.

SEC. 57. [Composition of the militia.] The militia of the United States shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the National Guard, the Naval Militia, and the Unorganized Militia. [39 Stat. L. 197.]

All laws relating to the Naval Militia were repealed by the Naval Appropriation Act of July 1, 1918, ch. —, *infra*, p. 458dd.

Inclusiveness of term "militia."—The militia of the United States, as defined in the Act of June 3, 1916, is sufficiently inclusive to embrace most, if not all, of the individuals composing the militia, organized or unorganized, of the several states. But should they by conscription be drafted into an army destined for

foreign parts they would necessarily lose the character of organized state militia, and the implied constitutional inhibition against calling out the organized state militia except to "execute the laws of the Union, suppress insurrections and repeal invasions" would cease to apply. *United States v. Stephens*, 245 Fed. 956.

SEC. 58. [Composition of the National Guard.] The National Guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. [39 Stat. L. 197.]

SEC. 59. [Exemptions from militia duty.] The Vice President of the United States; the officers, judicial and executive, of the Government of the United States and of the several States and Territories; persons in the military or naval service of the United States; customhouse clerks; persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from militia duty without regard to age, and all persons who because of religious belief shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be non-combatant. [39 Stat. L. 197.]

SEC. 60. [Organization of National Guard units.] Except as otherwise specifically provided herein, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the Regular Army, subject in time of peace to such general exemptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each State, Territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units. [39 Stat. L. 197.]

SEC. 61. [Maintenance of other troops by the States.] No state shall maintain troops in time of peace other than as authorized in accordance with the organization prescribed under this Act: *Provided*, That nothing contained in this Act shall be construed as limiting the rights of the States and Territories in the use of the National Guard within their respective borders in time of peace: *Provided further*, That nothing contained in this Act shall prevent the organization and maintenance of State police or constabulary. [39 Stat. L. 198.]

SEC. 62. [Number of the National Guard.] The number of enlisted men of the National Guard to be organized under this Act within one year

from its passage shall be for each State in the proportion of two hundred such men for each Senator and Representative in Congress from such State, and a number to be determined by the President for each Territory and the District of Columbia, and shall be increased each year thereafter in the proportion of not less than fifty per centum until a total peace strength of not less than eight hundred enlisted men for each Senator and Representative in Congress shall have been reached: *Provided*, That in States which have but one Representative in Congress such increase shall be at the discretion of the President: *Provided further*, That this shall not be construed to prevent any State, Territory, or the District of Columbia from organizing the full number of troops required under this section in less time than is specified in this section, or from maintaining existing organizations if they shall conform to such rules and regulations regarding organization, strength, and armament as the President may prescribe: *And provided further*, That nothing in this Act shall be construed to prevent any State with but one Representative in Congress from organizing one or more regiments of troops, with such auxiliary troops as the President may prescribe; such organizations and members of such organizations to receive all the benefits accruing under this Act under the conditions set forth herein: *Provided further*, That the word Territory as used in this Act and in all laws relating to the land militia and the National Guard shall include and apply to Hawaii, Alaska, Porto Rico, and the Canal Zone, and the militia of the Canal Zone shall be organized under such rules and regulations, not in conflict with the provisions of this Act, as the President may prescribe. [39 Stat. L. 198.]

SEC. 63. [Retention of ancient privileges.] Any corps of Artillery, Cavalry, or Infantry existing in any of the States on the passage of the Act of May eighth, seventeen hundred and ninety-two, which by the laws, customs, or usages of said States has been in continuous existence since the passage of said Act, under its provision and under the provisions of section two hundred and thirty-two and sections sixteen hundred and twenty-five to sixteen hundred and sixty, both inclusive, of title sixteen of the Revised Statutes of eighteen hundred and seventy-three, and the Act of January twenty-first, nineteen hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of militia: *Provided*, That said organizations may be a part of the National Guard and entitled to all the privileges of this Act, and shall conform in all respects to the organization, discipline, and training of the National Guard in time of war: *Provided further*, That for purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. [39 Stat. L. 198.]

The Act of May 8, 1872, mentioned in this section, was incorporated in R. S. secs. 1625-1660 which, together with R. S. sec. 232 also mentioned in the text, were repealed by the Act of June 1, 1903, ch. 196, likewise mentioned in this section. See 10 Fed. Stat. Ann. 226.

SEC. 64. [Assignment of National Guard to brigades and divisions.] For the purpose of maintaining appropriate organization and to assist

in instruction and training, the President may assign the National Guard of the several States and Territories and the District of Columbia to divisions, brigades, and other tactical units, and may detail officers either from the National Guard or the Regular Army to command such units: *Provided*, That where complete units are organized within a State, Territory, or the District of Columbia the commanding officers thereof shall not be displaced under the provisions of this section. [39 Stat. L. 198.]

SEC. 65. [Chiefs of staff of National Guard divisions.] The President may detail one officer of the Regular Army as chief of staff and one officer of the Regular Army or the National Guard as assistant to the chief of staff of any division of the National Guard in the service of the United States as a National Guard organization: *Provided*, That in order to insure the prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail an officer of the Regular Army to perform the duties of chief of staff for each fully organized tactical division of the National Guard. [39 Stat. L. 199.]

SEC. 66. [Adjutants general of States, and so forth.] The adjutants general of the States, Territories, and the District of Columbia and the officers of the National Guard shall make such returns and reports to the Secretary of War, or to such officers as he may designate, at such times and in such form as the Secretary of War may from time to time prescribe: *Provided*, That the adjutants general of the Territories and of the District of Columbia shall be appointed by the President with such rank and qualifications as he may prescribe, and each adjutant general for a Territory shall be a citizen of the Territory for which he is appointed. [39 Stat. L. 199.]

SEC. 67. [Appropriation, apportionment, and disbursement of funds for the National Guard.] A sum of money shall hereafter be appropriated annually, to be paid out of any money in the Treasury not otherwise appropriated, for the support of the National Guard, including the expense of providing arms, ordnance stores, quartermaster stores, and camp equipage, and all other military supplies for issue to the National Guard, and such other expenses pertaining to said guard as are now or may hereafter be authorized by law.

The appropriation provided for in this section shall be apportioned among the several States and Territories under just and equitable procedure to be prescribed by the Secretary of War and in direct ratio to the number of enlisted men in active service in the National Guard existing in such States and Territories at the date of apportionment of said appropriation, and to the District of Columbia, under such regulations as the President may prescribe: *Provided*, That the sum so apportioned among the several States, Territories, and the District of Columbia, shall be available under such rules as may be prescribed by the Secretary of War for the actual and necessary expenses incurred by officers and enlisted men of the Regular Army when traveling on duty in connection with the National Guard; for the transportation of supplies furnished to the National Guard for the permanent equipment thereof; for office rent and necessary office

expenses of officers of the Regular Army on duty with the National Guard; for the expenses of the Militia Bureau, including clerical services, now authorized for the Division of Militia Affairs; for expenses of enlisted men of the Regular Army on duty with the National Guard, including quarters, fuel, light, medicines, and medical attendance; and such expenses shall constitute a charge against the whole sum annually appropriated for the support of the National Guard, and shall be paid therefrom and not from the allotment duly apportioned to any particular State, Territory, or the District of Columbia; for the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges; for the hiring of horses and draft animals for the use of mounted troops, batteries, and wagons; for forage for the same; and for such other incidental expenses in connection with lawfully authorized encampments, maneuvers, and field instruction as the Secretary of War may deem necessary, and for such other expenses pertaining to the National Guard as are now or may hereafter be authorized by law.

The governor of each State and Territory and the Commanding General of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, the Adjutant General or an officer of the National Guard of the State, Territory, or District of Columbia, who shall be regarded as property and disbursing officer of the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the National Guard of his State, Territory, or District, and shall make such returns and reports concerning the same as may be required by the Secretary of War. The Secretary of War is authorized, on the requisition of the governor of a State or Territory or the commanding general of the National Guard of the District of Columbia, to pay to the property and disbursing officer thereof so much of its allotment out of the annual appropriation for the support of the National Guard as shall, in the judgment of the Secretary of War, be necessary for the purposes enumerated therein. He shall render, through the War Department, such accounts of Federal funds intrusted to him for disbursement as may be required by the Treasury Department. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the Secretary of War, for the faithful performance of his duties and for the safe-keeping and proper disposition of the Federal property and funds intrusted to his care. He shall, after having qualified as property and disbursing officer, receive pay for his services at a rate to be fixed by the Secretary of War, and such compensation shall be a charge against the whole sum annually appropriated for the support of the National Guard: *Provided*, That when traveling in the performance of his official duties under orders issued by the proper authorities he shall be reimbursed for his actual necessary traveling expenses, the sum to be made a charge against the allotment of the State, Territory, or District of Columbia: *Provided further*, That the Secretary of War shall cause an inspection of the accounts and records of the property and disbursing officer to be made by an inspector general of the Army at least once each year: *And provided further*, That the Secretary of War is empowered to make all

rules and regulations necessary to carry into effect the provisions of this section. [39 Stat. L. 199, as amended by — Stat. L. —.]

The first sentence of the third paragraph of this section was amended to read as given in the text by the Army Appropriation Act of July 9, 1918, ch. —. As originally enacted it was as follows: "The governor of each State and Territory and the commanding general of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, an officer of the National Guard of the State, Territory, or District of Columbia who shall be regarded as property and disbursing officer for the United States."

SEC. 68. [Location of units.] The States and Territories shall have the right to determine and fix the location of the units and headquarters of the National Guard within their respective borders: *Provided*, That no organization of the National Guard, members of which shall be entitled to and shall have received compensation under the provisions of this Act, shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President. [39 Stat. L. 200.]

SEC. 69. [Enlistments in the National Guard.] Hereafter the period of enlistment in the National Guard shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the National Guard Reserve, hereinafter provided for, and the qualifications for enlistment shall be the same as those prescribed for admission to the Regular Army: *Provided*, That in the National Guard the privilege of continuing in active service during the whole of an enlistment period and of reenlisting in said service shall not be denied by reason of anything contained in this Act. [39 Stat. L. 200.]

SEC. 70. [Federal enlistment contract.] Enlisted men in the National Guard of the several States, Territories, and the District of Columbia now serving under enlistment contracts which contain an obligation to defend the Constitution of the United States and to obey the orders of the President of the United States shall be recognized as members of the National Guard under the provisions of this Act for the unexpired portion of their present enlistment contracts. When any such enlistment contract does not contain such obligation, the enlisted man shall not be recognized as a member of the National Guard until he shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment, upon signing which credit shall be given for the period already served under the old enlistment contract: "I do hereby acknowledge to have voluntarily enlisted this — day of —, 19—, as a soldier in the National Guard of the United States and of the State of —, for the period of three years in service and three years in the reserve, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the State of —, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and of the

governor of the State of ———, and of the officers appointed over me according to law and the rules and articles of war." [39 Stat. L. 201.]

SEC. 71. [Federal enlistment contract — oath.] Hereafter all men enlisting for service in the National Guard shall sign an enlistment contract and take and subscribe to the oath prescribed in the preceding section of this Act. [39 Stat. L. 201.]

SEC. 72. [Discharge of enlisted men from the National Guard.] An enlisted man discharged from service in the National Guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the President may prescribe. [39 Stat. L. 201.]

SEC. 73. [Federal oath for National Guard officers.] Commissioned officers of the National Guard of the several States, Territories, and the District of Columbia now serving under commissions regularly issued shall continue in office, as officers of the National Guard, without the issuance of new commissions: *Provided*, That said officers have taken, or shall take and subscribe to the following oath of office: "I, ———, do solemnly swear that I will support and defend the Constitution of the United States and the constitution of the State of ———, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the governor of the State of ———; that I make this obligation freely, without any mental reservation or purpose of evasion, that I will well and faithfully discharge the duties of the office of ——— in the National Guard of the United States and of the State of ——— upon which I am about to enter, so help me God." [39 Stat. L. 201.]

SEC. 74. [Qualifications for National Guard officers.] Persons hereafter commissioned as officers of the National Guard shall not be recognized as such under any of the provisions of this Act unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in the preceding section of this Act: Officers or enlisted men of the National Guard; officers on the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy, and Marine Corps; graduates of the United States Military and Naval Academies and graduates of schools, colleges, and universities where military science is taught under the supervision of an officer of the Regular Army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. [39 Stat. L. 201.]

SEC. 75. [Same.] The provisions of this Act shall not apply to any person hereafter appointed an officer of the National Guard unless he first shall have successfully passed such tests as to his physical, moral, and professional fitness as the President shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of

three commissioned officers appointed by the Secretary of War from the Regular Army or the National Guard, or both. [39 Stat. L. 202.]

SEC. 76. [Filling of vacancies when drafted into Federal service.] All vacancies occurring in any grade of commissioned officers in any organization in the military service of the United States and composed of persons drafted from the National Guard under the provisions of this Act shall be filled by the President, as far as practicable, by the appointment of persons similarly taken from said guard, and in the manner prescribed by law for filling similar vacancies occurring in the volunteer forces. [39 Stat. L. 202.]

SEC. 77. [Elimination and disposition of officers.] At any time the moral character, capacity, and general fitness for the service of any National Guard officer may be determined by an efficiency board of three commissioned officers, senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such an officer, he shall be discharged. Commissions of officers of the National Guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of said guard rendered surplus by the disbandment of their organizations shall be placed in the National Guard Reserve. Officers may, upon their own application, be placed in the said reserve. [39 Stat. L. 202.]

SEC. 78. [The National Guard Reserve.] Subject to such rules and regulations as the President may prescribe, a National Guard Reserve shall be organized in each State, Territory, and the District of Columbia, and shall consist of such organizations, officers, and enlisted men as the President may prescribe, or members thereof may be assigned as reserves to an active organization of the National Guard: *Provided*, That members of said reserves, when engaged in field or coast-defense training with the active National Guard, shall receive the same Federal pay and allowances as enlisted men of like grade on the active list of said guard when likewise engaged: *Provided further*, That, except as otherwise specifically provided in this Act, no commissioned or enlisted reservist shall receive any pay or allowances out of any appropriation made by Congress for National Guard purposes. [39 Stat. L. 202.]

SEC. 79. [Reserve battalions for recruit training.] When members of the National Guard and the enlisted reserve thereof of any State, Territory, or the District of Columbia shall have been brought into the service of the United States in time of war, there shall be immediately organized, either from such enlisted reserve or from the unorganized militia, in such State, Territory, or District, one reserve battalion for each regiment of Infantry, or Cavalry, or each nine batteries of Field Artillery, or each twelve companies of Coast Artillery, brought into the service of the United States,

and such reserve battalion shall constitute the fourth battalion of any such regiment of twelve companies of Coast Artillery. Reserve battalions shall consist of four companies of such strength as may be prescribed by the President of the United States. When the members of three or more regiments of the National Guard of any State, Territory, or District shall have been brought into the service of the United States, the reserve battalions of such regiments may be organized into provisional regiments and higher units. If for any reason there shall not be enough voluntary enlistments to keep the reserve battalions at the prescribed strength, a sufficient number of the unorganized militia shall be drafted into the service of the United States to maintain each of such battalions at the proper strength. As vacancies occur from death or other causes in any organization in the service of the United States and composed of men taken from the National Guard, men shall be transferred from the reserve battalions to the organizations in the field so that such organizations may be maintained at war strength. Officers for the reserve battalions provided for herein shall be drafted from the National Guard Reserve or Coast Artillery companies of the National Guard or the Officers' Reserve Corps, such officers to be taken, if practicable, from the States, respectively, in which the battalions shall be organized. Officers and noncommissioned officers returned to their home stations because of their inability to perform active field service may be assigned to reserve battalions for duty, and all soldiers invalided home shall be assigned to and carried on the rolls of reserve battalions until returned to duty or until discharged. [39 Stat. L. 202.]

SEC. 80. [Leaves of absence for certain Government employees.] All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this Act. [39 Stat. L. 203.]

SEC. 81. [Militia Bureau of the War Department.] The National Militia Board created by section eleven of the Act of May twenty-seventh, nineteen hundred and eight, amending section twenty of the Act of January twenty-first, nineteen hundred and three, shall, from the date of the approval of this Act, be abolished. The Militia Division now existing in the War Department shall hereafter be known as the Militia Bureau of said department, shall, like other bureaus of said department, be under the immediate supervision of the Secretary of War, and shall not form a part of any other bureau, office, or other organization, but the Chief of the Militia Bureau shall be ex officio a member of the General Staff Corps: *Provided*, That the President may, in his discretion, assign to duty in the Militia Bureau as assistants to the chief thereof not to exceed one colonel and one lieutenant colonel of the National Guard, for terms of four years, and any such officer while so assigned shall, subject to such regulations as the President may prescribe, receive out of the whole fund appropriated for the support of the militia the pay and allowances of a Regular Army

officer having the same rank and length of service as said National Guard officer, whose prior service in the Organized Militia shall be counted in ascertaining his rights under this proviso. [39 Stat. L. 203.]

The Act of January 21, 1903, ch. 196, § 20, 32 Stat. L. 779, as amended by the Act of May 27, 1908, ch. 204, § 11, 35 Stat. L. 402, mentioned in the text was as follows:

"SEC. 20. That upon the application of the governor of any State or Territory furnished with material of war under the provisions of this Act, or former laws of Congress, the Secretary of War may, in his discretion, detail one or more officers or enlisted men of the Army to report to the governor of such State or Territory for duty in connection with the organized militia. All such assignments may be revoked at the request of the governor of such State or Territory or at the pleasure of the Secretary of War. The Secretary of War is hereby authorized to appoint a board of five officers on the active list of the organized militia so selected as to secure, as far as practicable, equitable representation to all sections of the United States, and which, from time to time, as the Secretary of War may direct, proceed to Washington, District of Columbia, for consultation with the Secretary of War, respecting the condition, status, and needs of the whole body of the organized militia. Such officers shall be appointed for the term of four years unless sooner relieved by the Secretary of War.

"The actual and necessary traveling expenses of the members of the board, together with a per diem to be established by the Secretary of War, shall be paid to the members of the board. The expenses herein authorized, together with the necessary clerical and office expenses of the division of militia affairs in the office of the Secretary of War, shall constitute a charge against the whole sum annually appropriated under section sixteen hundred and sixty-one, Revised Statutes, as amended, and shall be paid therefrom, and not from the allotment duly apportioned to any particular State, Territory, or the District of Columbia; and a list of such expenses shall be submitted to Congress annually by the Secretary of War in connection with his annual report."

The Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 Stat. L. 646, contained a provision as follows:

"To provide for the necessary clerical and office expenses of the Militia Bureau authorized by section sixty-seven of the Act approved June third, nineteen hundred and sixteen: Chief clerk, \$2,000; clerks—two of class four, three of class three, seven of class two, fifteen of class one, eight at \$1,000 each; messenger; two assistant messengers; two laborers, at \$660 each per annum."

SEC. 82. [Armament, equipment, and uniform of the National Guard.]

The National Guard of the United States shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipments as are or shall be provided for the Regular Army. [39 Stat. L. 203.]

SEC. 83. [Issuance by Secretary of War.] The Secretary of War is hereby authorized to procure, under such regulations as the President may prescribe, by purchase or manufacture, within the limits of available appropriations made by Congress, and to issue from time to time to the National Guard, upon requisition of the governors of the several States and Territories or the commanding general of the National Guard of the District of Columbia, such number of United States service arms, with all accessories, field-artillery material, engineer, coast artillery, signal, and sanitary material, accouterments, field uniforms, clothing, equipage, publications, and military stores of all kinds, including public animals, as are necessary to arm, uniform, and equip for field service the National Guard in the several States, Territories, and the District of Columbia: *Provided*, That as a condition precedent to the issue of any property as provided for by this Act, the State, Territory, or the District of Columbia desiring such issue shall make adequate provision, to the satisfaction of the Secretary of War, for the protection and care of such property: *Provided further*, That, whenever it shall be shown to the satisfaction of the Secretary of

War that the National Guard of any State, Territory, or the District of Columbia, is properly organized, armed, and equipped for field service, funds allotted to that State, Territory, or District for the support of its National Guard may be used for the purchase, from the War Department, of any article issued by any of the supply departments of the Army. [39 Stat. L. 203.]

SEC. 84. [New type of equipment, etc., to replace old — expense.] Under such regulations as the President may prescribe, whenever a new type of equipment, small arm, or field gun shall have been issued to the National Guard of the several States, Territories, and the District of Columbia, such equipment, small arms, and field guns, including all accessories, shall be furnished without charging the cost or value thereof or any expense connected therewith against the appropriations provided for the support of the National Guard. [39 Stat. L. 204.]

SEC. 85. [Disposition of replaced property.] Each State, Territory, and the District of Columbia shall, on the receipt of new property issued to replace obsolete or condemned prior issues, turn in to the War Department or otherwise dispose of, in accordance with the directions of the Secretary of War, all property so replaced or condemned, and shall not receive any money credit therefor. [39 Stat. L. 204.]

SEC. 86. [Purchase by state, etc., of supplies from War Department.] Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department for the use of the National Guard, including the officers thereof, any stores, supplies, material of war, and military publications furnished to the Army, in addition to those issued under the provisions of this Act, at the price at which they shall be listed to the Army, with cost of transportation added. The funds received from such sales shall be credited to the appropriation to which they shall belong, shall not be covered into the Treasury, and shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized: *Provided*, That stores, supplies, and material of war so purchased by a State, Territory, or the District of Columbia may, in time of actual or threatened war be requisitioned by the United States for use in the military service thereof, and when so requisitioned by the United States and delivered credit for the ultimate return of such property in kind shall be allowed to such State, Territory, or the District of Columbia. [39 Stat. L. 204.]

SEC. 87. [Disposition and replacement of damaged property, and so forth.] All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in any State or Territory or the District of Columbia, shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such

officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the State or Territory or the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable State, Territory, or District of Columbia, to be paid from State, Territory, or District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition, by sale or otherwise, shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from any State, Territory, or District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to said State, Territory, or the District of Columbia, accountable for said property, and as a part of and in addition to that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: *Provided further*, That if any State, Territory, or the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against such State, Territory, or the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar such State, Territory, or the District of Columbia from further participation in any and all appropriations for the National Guard until such payment shall have been made. [39 Stat. L. 204.]

SEC. 88. [Proceeds of sale of condemned stores — disposition.] The net proceeds of the sale of condemned stores issued to the National Guard, and not charged to State allotments shall be covered into Treasury of the United States, as shall also stoppages against officers and enlisted men, and the net proceeds of collections made from any person to reimburse the Government for the loss, damage, or destruction of said property not charged against the State allotment issued for the use of the National Guard. [39 Stat. L. 205.]

SEC. 89. [Horses for Cavalry and Field Artillery of National Guard.] Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase, under such regulations as the Secretary of War may prescribe, of horses conforming to the Regular Army standards for the use of Field Artillery and Cavalry of the National Guard, said horses to remain the property of the United States and to be used solely for military purposes.

Horses so purchased may be issued not to exceed thirty-two to any one battery or troop, under such regulations as the Secretary of War may prescribe; and the Secretary of War is further authorized to issue, in lieu of purchase, for the use of such organizations, condemned Army horses which

are no longer fit for service, but which may be suitable for the purposes of instruction, such horses to be sold as now provided by law when said purposes shall have been served. [39 Stat. L. 205.]

SEC. 90. [Funds allotted for support of National Guard — availability for purchases.] Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase and issue of forage, bedding, shoeing, and veterinary services, and supplies for the Government horses issued to any battery or troop, and for the compensation of competent help for the care of the material, animals, and equipment thereof, under such regulations as the Secretary of War may prescribe: *Provided*, That the men to be compensated, not to exceed five for each battery or troop, shall be duly enlisted therein and shall be detailed by the battery or troop commander, under such regulations as the Secretary of War may prescribe, and shall be paid by the United States disbursing officer in each State, Territory, and the District of Columbia. [39 Stat. L. 205.]

SEC. 91. [Discipline to conform to that of Regular Army.] The discipline (which includes training) of the National Guard shall conform to the system which is now or may hereafter be prescribed for the Regular Army, and the training shall be carried out by the several States, Territories, and the District of Columbia so as to conform to the provisions of this Act. [39 Stat. L. 206.]

SEC. 92. [Training of the National Guard.] Each company, troop, battery, and detachment in the National Guard shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall, in addition thereto, participate in encampments, maneuvers, or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such company, troop, battery, or detachment shall have been excused from participation in any part thereof by the Secretary of War: *Provided*, That credit for an assembly for drill or for indoor target practice shall not be given unless the number of officers and enlisted men present for duty at such assembly shall equal or exceed a minimum to be prescribed by the President, nor unless the period of actual military duty and instruction participated in by each officer and enlisted man at each such assembly at which he shall be credited as having been present shall be of at least one and one-half hours' duration and the character of training such as may be prescribed by the Secretary of War. [39 Stat. L. 206.]

SEC. 93. [Inspections of the National Guard.] The Secretary of War shall cause an inspection to be made at least once each year by inspectors general, and if necessary by other officers, of the Regular Army, detailed by him for that purpose, to determine whether the amount and condition of the property in the hands of the National Guard is satisfactory; whether the National Guard is organized as hereinbefore prescribed; whether the officers and enlisted men possess the physical and other qualifications prescribed; whether the organization and the officers and enlisted men thereof are sufficiently armed, uniformed, equipped, and being trained and

instructed for active duty in the field or coast defense, and whether the records are being kept in accordance with the requirements of this Act. The reports of such inspections shall serve as the basis for deciding as to the issue to and retention by the National Guard of the military property provided for by this Act, and for determining what organizations and individuals shall be considered as constituting parts of the National Guard within the meaning of this Act. [39 Stat. L. 206.]

SEC. 94. [Encampments and maneuvers.] Under such regulations as the President may prescribe the Secretary of War is authorized to provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds appropriated for that purpose and allotted to any State, Territory, or the District of Columbia, such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of such State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction; and the officers and enlisted men of such National Guard while so engaged shall be entitled to the same pay, subsistence, and transportation as officers and enlisted men of corresponding grades of the Regular Army are or hereafter may be entitled by law. [39 Stat. L. 206.]

SEC. 95. [Commanding officers at encampments, etc.] When any part of the National Guard participates in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction at a United States military post, or reservation, or elsewhere, if in conjunction with troops of the United States, the command of such military post or reservation and of the officers and troops of the United States on duty there or elsewhere shall remain with the commander of the United States troops without regard to the rank of the commanding or other officer of the National Guard temporarily engaged in the encampments, maneuvers, or other exercises. [39 Stat. L. 207.]

SEC. 96. [Use of Regular Army personnel.] The Secretary of War may detail one or more officers and enlisted men of the Regular Army to attend any encampment, maneuver, or other exercise for field or coast-defense instruction of the National Guard, who shall give such instruction and information to the officers and men assembled for such encampment, maneuver, or other exercise as may be directed by the Secretary of War or requested by the governor or by the commanding officer of the National Guard there on duty. [39 Stat. L. 207.]

SEC. 97. [Camps for instruction of National Guard.] Under such regulations as the President may prescribe the Secretary of War may provide camps for the instruction of officers and enlisted men of the National Guard. Such camps shall be conducted by officers of the Regular Army

detailed by the Secretary of War for that purpose, and may be located either within or without the State, Territory, or District of Columbia to which the members of the National Guard designated to attend said camps shall belong. Officers and enlisted men attending such camps shall be entitled to pay and transportation, and enlisted men to subsistence in addition, at the same rates as for encampments or maneuvers for field or coast-defense instruction. [39 Stat. L. 207.]

SEC. 98. [**Encampments, etc., of National Guard — pay.**] When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, under the provisions of this Act, it may, after being duly mustered, be paid at any time after such muster for the period from the date of leaving the home rendezvous to date of return thereto as determined in advance, both dates inclusive; and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same. [39 Stat. L. 207.]

SEC. 99. [**National Guard officers and men at service schools, and so forth.**] Under such regulations as the President may prescribe, the Secretary of War may, upon the recommendation of the governor of any State or Territory or the commanding general of the National Guard of the District of Columbia, authorize a limited number of selected officers or enlisted men of the National Guard to attend and pursue a regular course of study at any military service school of the United States, except the United States Military Academy; or to be attached to an organization of the same arm, corps, or department to which such officer or enlisted man shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises; and such officer or enlisted man shall receive, out of any National Guard allotment of funds available for the purpose, the same travel allowances and quarters, or commutation of quarters, and the same pay, allowances, and subsistence to which an officer or enlisted man of the Regular Army would be entitled for attending such school, college, or practical course of instruction under orders from proper military authority, while in actual attendance at such school, college, or practical course of instruction: *Provided*, That in no case shall the pay and allowances authorized by this section exceed those of a captain. [39 Stat. L. 207.]

SEC. 100. [**Detail of officers of Regular Army to duty with the National Guard.**] The Secretary of War shall detail officers of the active list of the Army to duty with the National Guard in each State, Territory, or District of Columbia, and officers so detailed may accept commissions in the National Guard, with the permission of the President and terminable in his discretion, without vacating their commissions in the Regular Army or being prejudiced in their relative or lineal standing therein. The Secretary of War may, upon like application, detail one or more enlisted men of the Regular Army with each State, Territory, or District of Columbia

for duty in connection with the National Guard. But nothing in this section shall be so construed as to prevent the detail of retired officers as now provided by law. [39 Stat. L. 208.]

SEC. 101. [National Guard, when subject to laws governing Regular Army.] The National Guard when called as such into the service of the United States shall, from the time they are required by the terms of the call to respond thereto, be subject to the laws and regulations governing the Regular Army, so far as such laws and regulations are applicable to officers and enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law. [39 Stat. L. 208.]

SEC. 102. [System of courts-martial for National Guard.] Except in organizations in the service of the United States, court-martial in the National Guard shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the forms and modes of procedure prescribed for said similar courts. [39 Stat. L. 208.]

SEC. 103. [Convening of general courts-martial — power of courts.] General courts-martial of the National Guard not in the service of the United States may be convened by orders of the President, or of the governors of the respective States and Territories, or by the commanding general of the National Guard of the District of Columbia, and such courts shall have the power to impose fines not exceeding \$200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. [39 Stat. L. 208.]

SEC. 104. [Special courts-martial.] In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such courts shall not exceed \$100. [39 Stat. L. 208.]

SEC. 105. [Summary courts-martial.] In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment or corps, detached battalion, company,

or other detachment of the National Guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding \$25 for any single offense; may sentence noncommissioned officer to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the Army of the United States. [39 Stat. L. 208.]

SEC. 106. [Courts-martial — sentences.] All courts-martial of the National Guard, not in the service of the United States, including summary courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed: *Provided*, That such sentences of confinement shall not exceed one day for each dollar of fine authorized. [39 Stat. L. 209.]

SEC. 107. [Approval of sentences.] No sentence of dismissal from the service or dishonorable discharge, imposed by a National Guard court-martial, not in the service of the United States, shall be executed until approved by the governor of the State or Territory concerned, or by the commanding general of the National Guard of the District of Columbia. [39 Stat. L. 209.]

SEC. 108. [Courts-martial — securing attendance of parties and witnesses — process.] In the National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

All processes and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the several States and Territories, and in any State where no provision shall have been made for such action, and in the Territories and the District of Columbia, such processes and sentences shall be executed by a United States marshal or his duly appointed deputy, and it shall be the duty of any United States marshal to execute all such processes and sentences and make return thereof to the officer issuing or imposing the same. [39 Stat. L. 209.]

SEC. 109. [Pay for National Guard officers.] Certain commissioned officers on the active list belonging to organizations of the National Guard of each State, Territory, and the District of Columbia participating in the apportionment of the annual appropriation for the support of the National Guard shall receive compensation for their services, except during periods

of service for which they may become lawfully entitled to the same pay as officers of corresponding grades of the Regular Army, as follows, not to include longevity pay: A captain \$500 per year and the same pay shall be paid to every officer of higher rank than that of captain, a first lieutenant \$240 per year, and a second lieutenant \$200 per year. Regulations to be prescribed by the Secretary of War shall determine the amount and character of service that must be rendered by officers to entitle them to the whole or specific parts of the maximum pay hereinbefore authorized: *Provided*, That all staff officers, aids-de-camp, and chaplains shall receive not to exceed one-half of the pay of a captain, except that regimental adjutants, and majors and captains in command of machine gun companies, ambulance companies, field hospital companies, or sanitary troops shall receive the pay hereinbefore authorized for a captain. [39 Stat. L. 209.]

SEC. 110. [Pay for National Guard enlisted men.] Each enlisted man on the active list belonging to an organization of the National Guard of a State, Territory, or the District of Columbia, participating in the apportionment of the annual appropriation for the support of the National Guard, shall receive compensation for his services, except during periods of service for which he may become lawfully entitled to the same pay as an enlisted man of corresponding grade in the Regular Army, at a rate equal to twenty-five per centum of the initial pay now provided by law for enlisted men of corresponding grades of the Regular Army: *Provided*, That such enlisted man shall receive the compensation herein provided if he shall have attended not less than forty-eight regular drills during any one year; and a proportionate amount for attendance upon a lesser number of such drills, not less than twenty-four; and no such enlisted man shall receive any part of said compensation except as authorized by this proviso and the three provisos next following: *Provided further*, That the compensation provided herein shall be computed for semi-annual periods, beginning the first day of January, and the first day of July of each year, in proportion to the number of drills attended; and no compensation shall be paid to any enlisted man for the first semi-annual period of any year unless he shall have attended during said period at least twenty-four drills, but any lesser number of drills attended during said period shall be reckoned with the drills attended during the second semi-annual period in computing the compensation, if any, due him for that year: *Provided further*, That when any man enters into an enlistment other than an immediate reenlistment he shall be entitled to proportional compensation for that year if during the remainder of the year he shall attend a number of drills whose ratio to twenty-four is not less than the ratio of the part of the year so served to the whole year; and when any man's enlistment shall expire the compensation, if any, to which he may be entitled shall be determined in like manner: *Provided further*, That periods of any actual military duty equivalent to the drills herein prescribed (except those periods of service for which members of the National Guard may become lawfully entitled to the same pay as officers and enlisted men of the corresponding grades in the Regular Army) may be accepted as service in lieu of such drills when so provided by the Secretary of War.

All amounts appropriated for the purpose of this and the last preceding section shall be disbursed and accounted for by the officers and agents of the

Quartermaster Corps of the Army, and all disbursements under the foregoing provisions of this section shall be made as soon as practicable after the thirty-first day of December and the thirtieth day of June of each year upon pay rolls prepared and authenticated in the manner to be prescribed by the Secretary of War: *Provided*, That stoppages may be made against the compensation payable to any officer or enlisted man hereunder to cover the cost of public property lost or destroyed by and chargeable to such officer or enlisted man.

Except as otherwise specifically provided herein, no money appropriated under the provisions of this or the last preceding section shall be paid to any person not on the active list, nor to any person over sixty-four years of age, nor to any person who shall fail to qualify as to fitness for military service under such regulations as the Secretary of War shall prescribe, nor to any State, Territory, or District, or officer or enlisted man in the National Guard thereof, unless and until such State, Territory, or District provides by law that staff officers, including officers of the Pay, Inspection, Subsistence, and Medical Departments, hereafter appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the militia of such State, Territory, or District: *Provided further*, That the preceding proviso shall not apply to any State, Territory, or District until sixty days next after the adjournment of the next session of its legislature held after the approval of this Act. [39 Stat. L. 209.]

SEC. 111. [National Guard when drafted into Federal service.] When Congress shall have authorized the use of the armed land forces of the United States, for any purpose requiring the use of troops in excess of those of the Regular Army, the President may, under such regulations, including such physical examination, as he may prescribe, draft into the military service of the United States, to serve therein for the period of the war unless sooner discharged, any or all members of the National Guard and of the National Guard Reserve. All persons so drafted shall, from the date of their draft, stand discharged from the militia, and shall from said date be subject to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Volunteer Army, and shall be embodied in organizations corresponding as far as practicable to those of the Regular Army or shall be otherwise assigned as the President may direct. The commissioned officers of said organizations shall be appointed from among the members thereof, officers with rank not above that of colonel to be appointed by the President alone, and all other officers to be appointed by the President by and with the advice and consent of the Senate. Officers and enlisted men in the service of the United States under the terms of this section shall have the same pay and allowances as officers and enlisted men of the Regular Army of the same grades and the same prior service. [39 Stat. L. 211.]

See the Res. of July 1, 1916, ch. 211, *infra*, p. 458u.

SEC. 112. [**Pensions to drafted members of National Guard.**] When any officer or enlisted man of the National Guard drafted into the service of the United States in time of war is disabled by reason of wounds or disability received or incurred while in the active service of the United States in time of war, he shall be entitled to all the benefits of the pension laws existing at the time of his service, and in case such officer or enlisted man dies in the active service of the United States in time of war or in returning to his place of residence after being mustered out of such service, or at any other time in consequence of wounds or disabilities received in such active service, his widow and children, if any, shall be entitled to all the benefits of such pension laws. [39 Stat. L. 211.]

SEC. 113. [**Encouragement of rifle practice.**] The Secretary of War shall annually submit to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges, under such a comprehensive plan as will ultimately result in providing adequate facilities for rifle practice in all sections of the country. And that all ranges so established and all ranges which may have already been constructed, in whole or in part, with funds provided by Congress shall be open for use by those in any branch of the military or naval service of the United States and by all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the controlling authorities and approved by the Secretary of War. That the President may detail capable officers and noncommissioned officers of the Regular Army and National Guard to duty at such ranges as instructors for the purpose of training the citizenry in the use of the military arm. Where rifle ranges shall have been so established and instructors assigned to duty thereat, the Secretary of War shall be authorized to provide for the issue of a reasonable number of standard military rifles and such quantities of ammunition as may be available for use in conducting such rifle practice. [39 Stat. L. 211.]

The Army Appropriation Act of May 12, 1917, ch. —, 40 Stat. L. —, contained a provision as follows:

"To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for Promotion of Rifle Practice and approved by the Secretary of War; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors; for clerical services; for badges and other insignia; for the transportation of employees, instructors, and civilians to engage in practice; for the purchase of materials, supplies, and services, and for expenses incidental to instruction of citizens of the United States in marksmanship, to be expended under the direction of the Secretary of War and to remain available until expended, \$20,000."

SEC. 115. [**Physical examination.**] Every officer and enlisted man of the National Guard who shall be called into the service of the United States as such shall be examined as to his physical fitness under such regulations as the President may prescribe without further commission or enlistment: *Provided*, That immediately preceding the muster out of an officer or enlisted man, called into the active service of the United States he shall be physically examined under rules prescribed by the President of the United States, and the record thereof shall be filed and kept in the War Department. [39 Stat. L. 212.]

SEC. 116. [**Noncompliance with Federal Act.**] Whenever any State shall, within a limit of time to be fixed by the President, have failed or refused to comply with or enforce any requirements of this Act, or any regulation promulgated thereunder and in aid thereof by the President or the Secretary of War, the National Guard of such State shall be debarred, wholly or in part, as the President may direct, from receiving from the United States any pecuniary or other aid, benefit, or privilege authorized or provided by this Act or any other law. [39 Stat. L. 212.]

SEC. 117. [**Applicable to land forces only.**] The provisions of this Act in respect to the militia shall be applicable only to militia organized as a land force and not to the Naval Militia, which shall consist of such part of the militia as may be prescribed by the President for each State, Territory, or District: *Provided*, That each State, Territory, or District maintaining a Naval Militia as herein prescribed may be credited to the extent of the number thereof in the quota that would otherwise be required by section sixty-two of this Act. [39 Stat. L. 212.]

SEC. 118. [**Necessary rules and regulations.**] The President shall make all necessary rules and regulations and issue such orders as may be necessary for the thorough organization, discipline, and government of the militia provided for in this Act. [39 Stat. L. 213.]

SEC. 119. [**Annual estimates required.**] The Secretary of War shall cause to be estimated annually the amount necessary for carrying out the provisions of so much of this Act as relates to the militia, and no money shall be expended under said provisions except as shall from time to time be appropriated for carrying them out. [39 Stat. L. 213.]

Joint Resolution To authorize the President to draft members of the National Guard and of the Organized Militia of the several States, Territories, and the District of Columbia and members of the National Guard and Militia Reserve into the military service of the United States under certain conditions, and for other purposes.

[*Res. of July 1, 1916, ch. 211, 39 Stat. L. 339.*]

[SEC. 1.] [**Drafting National Guard, etc., into federal service — period of service.**] That in the opinion of the Congress of the United States an emergency now exists which demands the use of troops in addition to the Regular Army of the United States, and that the President be, and he is hereby, authorized to draft into the military service of the United States, under the provisions of section one hundred and eleven of the national defense Act approved June third, nineteen hundred and sixteen, so far as the provisions of said section may be applicable and not inconsistent with the terms hereof, any or all members of the National Guard and of the Organized Militia of the several States, Territories, and the District of Columbia and any and all members of the National Guard and Organized Militia Reserves, to serve for the period of the emergency, not exceeding

three years, unless sooner discharged: *Provided*, That all persons so drafted shall, from the date of their draft, stand discharged from the militia during the period of their service under said draft. [39 Stat. L. 339.]

The Act of June 3, 1916, ch. 134, § 111, mentioned in this section, is given *supra*, p. 458s.

The Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 Stat. L. 633, contained a provision as follows:

"That when members of the National Guard, who have been mustered into the service of the United States, have been discharged under the order of the War Department which provides that members of the National Guard with dependent families may be mustered out, transportation from their position on the Mexican border to their homes may be authorized by the Secretary of War; of persons on their discharge from the United States disciplinary barracks or from any place in which they have been held under a sentence of dishonorable discharge and confinement for more than six months, or from the Government Hospital for the Insane after transfer thereto from such barracks or place, to their homes (or elsewhere as they may elect), provided the cost in each case shall not be greater than to the place of last enlistment."

SEC. 2. [Pensions.] That the provisions of section one hundred and twelve of the national defense Act of June third, nineteen hundred and sixteen, shall be applicable to any officer or enlisted man drafted into the service of the United States pursuant to the provisions of this joint resolution. [39 Stat. L. 340.]

The Act of June 3, 1916, ch. 134, § 112, mentioned in this section, is given *supra*, p. 458t.

SEC. 3. [Organizations — officers — vacancies.] That when organizations the members of which are drafted under the provisions of this resolution do not constitute complete tactical units the President may, by combining such organizations, organize battalions, regiments, brigades, and divisions, and may appoint officers for such units from the Regular Army, from the members of such organizations, from those duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three, or members of the Officers Reserve Corps as provided in section thirty-eight of the national defense Act of June third, nineteen hundred and sixteen, officers with rank not above that of colonel to be appointed by the President alone and all other officers to be appointed by the President, by and with the advice and consent of the Senate: *Provided*, That vacancies incident to the appointment of officers of the Regular Army to the positions in the forces drafted for this emergency may be filled under the provisions of section eight of the Act of April twenty-fifth, nineteen hundred and fourteen. [39 Stat. L. 340.]

For the Act of Jan. 21, 1903, ch. 196, sec. 23, mentioned in the text, see 10 Fed. Stat. Ann. 232.

For the Act of June 3, 1916, ch. 134, § 38, mentioned in the text, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

For the Act of April 25, 1914, ch. 71, § 8, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 292.

SEC. 4. [Rank and precedence.] That whenever in time of war or public danger or during the emergency declared in section one of this resolution, two or more officers of the same grade are on duty in the same field, department, or command, or organization thereof, the President may assign the

command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order without regard to date of rank or commission as between officers of different classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted into the military service of the United States: *Provided*, That officers of the Regular Army holding commissions in forces drafted into the service of the United States shall rank and have precedence under said commissions as if they were commissioned in the Regular Army; but the rank of officers of the Regular Army under their commissions in the forces drafted into the service of the United States shall not for the purpose of this resolution be held to antedate muster or draft into the service of the United States. [39 Stat. L. 340.]

[SEC. 1.] **[Government employees — restoration to former positions — pay of men enlisted by State authorities.]** * * * That all officers and enlisted men of the National Guard and of the Medical Reserve Corps of the Army who are Government employees and who respond to the call of the President for service shall, at the expiration of the military service to which they are called, be restored to the positions occupied by them at the time of the call: *Provided further*, That nothing in this Act or previous Acts of Congress shall be construed to prohibit the paying of men enlisted by State authorities of any State for militia organization for the purpose of bringing said organization up to the minimum necessary to permit of the muster in of said organization, from the date of such enlistments to the date of muster in or from date of enlistment to date of rejection, after physical examination. [39 Stat. L. 624.]

This and the five paragraphs of the text following are from the Army Appropriation Act of Aug. 29, 1916, ch. 418.

[Rifle clubs and schools — supplies furnished for target practice.]
* * * The Secretary of War is hereby authorized to issue, under such rules and regulations as he may prescribe, for use in target practice, targets, target materials, and other necessary accessories, to rifle clubs organized under the rules of the National Board for the Promotion of Rifle Practice and to schools having a uniformed corps of cadets and carrying on military training, in sufficient number for the proper conduct of target practice. [39 Stat. L. 643.]

See the note to the preceding paragraph of the text.

[Horses for field artillery, etc.] * * * Arming, equipping, and training the National Guard: To provide for the purchase, under such regulations as the Secretary of War may prescribe, of horses conforming to the Regular Army standards for the use of Field Artillery, Cavalry, signal companies, engineer companies, ambulance companies, and other mounted units of the National Guard, said horses to remain the property

of the United States and to be used solely for military purposes. Horses so purchased may be issued not to exceed thirty-two to any one battery, troop, or company, or four to a battalion or regimental headquarters, under such regulation as the Secretary of War may prescribe. [39 Stat. L. 645.]

See the note to the first paragraph of this Act, *supra*, p. 458w.

[Reduced rates by common carriers to National Guard.] * * *

That hereafter nothing in the Act of February fourth, eighteen hundred and eighty-seven, known as the Act to regulate commerce, or any amendments thereto, shall be construed to prohibit any common carrier from giving reduced rates for members of National Guard organizations traveling to and from joint encampments with the Regular Army. [39 Stat. L. 646.]

See the note to the first paragraph of this Act, *supra*, p. 458w.

For the Interstate Commerce Act of Feb. 4, 1887, ch. 104, mentioned in the text, see 3 Fed. Stat. Ann. 808; 4 Fed. Stat. Ann. (2d ed.) 331.

[Director of Civilian Marksmanship — appointment.] * * *

That the President be, and he is hereby, authorized, in his discretion, to appoint, as Director of Civilian Marksmanship, under the direction of the Secretary of War, an officer of the Army or of the Marine Corps. [39 Stat. L. 648.]

See the note to the first paragraph of this Act, *supra*, p. 458w.

[Support of families of members of National Guard drafted into service of United States — suits — "family" defined.] * * *

That the sum of \$2,000,000 is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of War, and under such rules and regulations as he may prescribe, for the support of, at a cost of not more than \$50 per month, or so much of said amount as the Secretary of War may deem necessary, and not more than such enlisted man has been contributing monthly to the support of his family at the time of his being called or drafted into the service of the United States or during his enlistment period in the Regular Army at the time of such call or draft of the Organized Militia or National Guard, the family of each enlisted man of the Organized Militia or National Guard called or drafted into the service of the United States until his discharge from such service, and the family of each enlisted man of the Regular Army until his discharge from active service therein or until the discharge of the Organized Militia or National Guard from such service if such enlisted man is at that time in active service in the Regular Army, which family during the term of service of such enlisted man has no other income, except the pay of such enlisted man, adequate for the support of said family: *Provided*, That the action of the Secretary of War in all cases provided for in this paragraph shall be final, and no right to prosecute a suit in the Court of Claims or in any other court of the United States against the Government of the United States shall accrue to such enlisted man, or to any member of the family of any such enlisted man, by virtue of the passage of this Act: *And provided further*, That this paragraph shall not apply to any such enlisted man who shall marry after the fifteenth day of July,

nineteen hundred and sixteen; and the word "family" shall include only wife, children, and dependent mothers. [39 Stat. L. 649.]

See the note to the first paragraph of this Act, *supra*, p. 458w.

This paragraph was amended by the Act of Sept. 8, 1916, ch. —, § 901, and the Act of April 17, 1917, ch. —, § 1, given in the two paragraphs of the text following.

SEC. 901. [Support of families of members of National Guard — act of Aug. 29, 1916, ch. 418, sec. 1 amended.] The act approved August twenty-ninth, nineteen hundred and sixteen, being an Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, is hereby amended as follows:

"The sum of \$2,000,000, therein appropriated to be expended under the direction of the Secretary of War for the support of the family of each enlisted man of the Organized Militia or National Guard, or of the Regular Army, as therein provided, shall be available to be paid on the basis of and for time subsequent to June eighteenth, nineteen hundred and sixteen, the date of the call by the President, and the time for which such payment shall be made shall correspond with the time of service of the enlisted men, and payment shall be made without reference to the enlisted man having enlisted before or after the call by the President." [39 Stat. L. 801.]

This is a part of the Revenue Act of Sept. 8, 1916, ch. 463.

The provisions of the Act of Aug. 29, 1916, ch. 418, § 1, amended by this section are given in the preceding paragraph of the text.

See also the following paragraph of the text.

[SEC. 1.] [Support of families of members of National Guard — act of Aug. 29, 1916, ch. 418, sec. 1 amended.] * * * That the provision in the Act of August twenty-ninth, nineteen hundred and sixteen, as amended by section nine hundred and one of the Act of September eighth, nineteen hundred and sixteen, for the Federal support of families of enlisted men shall, with respect to enlisted men belonging to organizations of the Organized Militia or National Guard which entered the service of the United States under the calls of the President of May ninth, nineteen hundred and sixteen, and June eighteenth, nineteen hundred and sixteen, and enlisted men of the Regular Army who by the provisions of Acts above cited are beneficiaries thereof only during the time the Organized Militia or National Guard continue in the service of the United States under said calls, apply only to applications stated in the form prescribed by the Secretary of War which are received in the office of the Depot Quartermaster, Washington, District of Columbia, on or before June thirtieth, nineteen hundred and seventeen. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

The provisions of the Act of Aug. 29, 1916, ch. 418, § 1, amended by this section, are given in the second preceding paragraph of the text.

See also the preceding paragraph of the text.

[Horses and mules — transfer by Secretary of War — distribution.]

* * * That the Secretary of War is hereby authorized to transfer to those organizations of the National Guard entitled thereto such number of horses and pack mules purchased by the Quartermaster Corps of the Army under the provisions of the Act of July first, nineteen hundred and sixteen, not required for the proper equipment of organizations of the Regular Army, that can be issued to National Guard organizations under the regulations prescribed by the Secretary of War, all expenses incident to such transfer to be met from appropriations made for and on behalf of the National Guard; pack mules so transferred may be issued not to exceed six to any one radio company, machine-gun troop or company, or four to any one ambulance company, under such regulations as the Secretary of War may prescribe. [40 Stat. L. —.]

This and the following ten paragraphs of the text are from the Army Appropriation Act of May 12, 1917, ch. —.

[Care of material, etc.—help — pay.] * * * To provide for the compensation of competent help for the care of material, animals, and equipment thereof, under such regulations as the Secretary of War may prescribe: *Provided*, That the men to be compensated, not to exceed five for each battery, troop, or company, shall be duly enlisted therein and shall be detailed by the battery, troop, or company commander under such regulations as the Secretary of War may prescribe, and shall be paid by the United States disbursing officer in each State, Territory, and the District of Columbia. [— Stat. L. —.]

See the note to the preceding paragraph of the text.

[Encampments, etc.] * * * To provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice and field and coast defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds apportioned for that purpose and allotted to any State, Territory, or the District of Columbia, such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of said State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice and field and coast defense instruction; and the officers and enlisted men of such National Guard while so engaged shall be entitled to the same pay, subsistence, and transportation as officers and enlisted men of corresponding grades of the Regular Army are or hereafter may be entitled to by law. To provide for camps of instruction for the instruction of officers and enlisted men of the National Guard. Such camps shall be conducted by officers of the Regular Army detailed by the Secretary of War for the purpose, and may be located either within or without the State, Territory, or District of Columbia to which the members of the National Guard designated to attend said camps shall belong. Officers and enlisted men attending such camps shall be entitled to pay and transportation and enlisted men to subsistence in addition at the same rates as

for encampments or maneuvers for field and coast defense instruction.
[— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

[Service schools, etc.—attendance — pay and allowance.] * * * To provide for the attendance of selected officers or enlisted men of the National Guard who pursue a regular course of study at any military service school of the United States except the United States Military Academy; or to be attached to an organization of the same arm, corps, or department to which such officers or enlisted men shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises; and such officers or enlisted men shall receive out of any National Guard allotment of funds available for the purpose, the same travel allowances and quarters or commutation of quarters, and the same pay, allowance, and subsistence to which officers or enlisted men of the Regular Army would be entitled for attending such school, college, or practical course of instruction under orders from proper military authority while in actual attendance at such school, college, or practical course of instruction; *Provided*, That in no case shall the pay and allowances authorized herein exceed those of a captain, \$150,000. [40 *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

[Land for target ranges — sale.] * * * That when any land which has been heretofore or may be hereafter acquired by purchase for a target range for the use of the National Guard of any State, Territory, or the District of Columbia, shall have become useless or shall be found to be unavailable for such purpose, the Secretary of War may cause the same to be sold either in whole or in two or more parts as he may deem best for the interests of the United States. In the disposal of such property, the Secretary of War shall cause the same to be appraised either as a whole or in two or more tracts, having due reference to the requirements of any permanent improvements made thereon; and he shall cause the property to be offered at public or private sale at not less than the appraised value. The expenses for advertising, appraisal, survey, and sale shall be paid from the proceeds of the sale; and the net proceeds thereof shall be placed to the credit of the State, Territory, or District of Columbia, as additional to its allotment under section sixty-seven of the Act of June third, nineteen hundred and sixteen. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

[Inspector-instructors — use of state armories.] * * * That whenever practicable inspector-instructors shall use the State armories or other public buildings for offices. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

A similar provision appeared in the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 *Stat. L.* 647.

[Officers and enlisted men — staff corps and departments.] * * * That the National Guard of any State, Territory, or the District of Colum-

bia, shall include such officers and enlisted men of the Staff Corps and Departments, corresponding to those of the Regular Army, as may be authorized by the Secretary of War. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

[Infantry equipment—issuance by Secretary of War.] That whenever in the opinion of the Secretary of War a sufficient number of Infantry equipment, model of nineteen hundred and ten, shall have been procured and shall be available for the purpose the Secretary of War is hereby authorized to issue on the requisition of the governors of the several States and Territories or the commanding general of the District of Columbia National Guard, such numbers thereof as are required for equipping the National Guard in said States, Territories, and the District of Columbia, without charging the cost or value thereof or any expenses connected therewith, against any allotments to said States, Territories, or the District of Columbia, provided that the equipment thus issued shall be receipted for and shall remain the property of the United States and be annually accounted for in the manner prescribed by the Act of June third, nineteen hundred and sixteen, and that each State, Territory, and the District of Columbia shall, upon receipt of new equipment, turn in to the Ordnance Department of the United States Army, without receiving any money credit therefor and without expense for transportation of Infantry equipment now in its possession, the property of the United States, and replaced by articles of the model of nineteen hundred and ten equipment. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

Provisions similar to those of this paragraph appeared in the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 Stat. L. 647.

[Field artillery material.] * * * For the purpose of manufacturing and procuring field artillery material for the National Guard of the several States, Territories, and the District of Columbia, but to remain the property of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories or the commanding general of the National Guard of the District of Columbia, to issue said artillery material to the National Guard; and the sum of \$10,000,000 is hereby appropriated and made immediately available for the manufacture, procurement, and issue of the articles constituting the same. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

Provisions similar to those of this paragraph have appeared in like Acts for preceding years.

[Civilian military training.] * * * For the expense of maintaining, upon military reservations or elsewhere, camps for the military instruction and training of such citizens physically capable of bearing arms as may be selected under such regulations as may be prescribed by the Secretary of War, and for furnishing said citizens, at the expense of the United States, uniforms, subsistence, transportation by the most usual and direct route within said limits as to territory as may be prescribed; for such expendi-

tures as may be deemed necessary for water, fuel, light, temporary structures, not including quarters for officers nor barracks for men, screening, and damages resulting from field exercises, and other expenses incidental to maintaining said camps and the theoretical winter instruction in connection therewith, including text books and stationery; for furnishing each equipments, tentage, field equipage, and transportation belonging to the United States as may be deemed necessary as authorized by section fifty-four of the Act of Congress approved June third, nineteen hundred and sixteen, \$3 281,000: *Provided*, That the Secretary of War is hereby authorized out of this appropriation to pay to persons designated by him for training as officers in the Army during the period of their training the sum of not to exceed \$100 per month in addition to the allowances authorized by said section fifty-four: *Provided*, That they shall agree to accept appointment in the Officers' Reserve Corps, in such grade as may be tendered by the Secretary of War.

Provided further, That so much of section fifty-four of the Act of June third, nineteen hundred and sixteen, entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," as relates to the transportation of citizens who, conformably to such regulations as the Secretary of War may prescribe, attend training camps be, and the same is hereby amended so as to provide that said citizens shall be paid as traveling allowances three and one-half cents per mile for the distance by the shortest usually traveled route from the places from which they are authorized to proceed to the camp and for the return travel thereto: *Provided further*, That the payment of travel pay for the return journey may be made in advance of the actual performance of travel. [— *Stat. L. —*.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

The Act of June 3, 1916, ch. 134, § 54, in part amended by the text, is given *supra*, p. 458a.

[**Rifle clubs — instructors.**] * * * That the Secretary of War, in his discretion, and under such regulations as he may prescribe, may authorize the detail of enlisted men of the Army as temporary instructors in rifle practice to organized rifle clubs requesting such instruction. [— *Stat. L. —*.]

See the note to the first paragraph of this Act, *supra*, p. 458z.

An Act To authorize the calling into the service of the United States the militia and other locally created armed forces in the Philippine Islands, and for other purposes.

[*Act of Jan. 26, 1918, ch. —, — Stat. L. —*.]

[**Philippine Militia — mobilization — pay and allowances.**] That the militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof

may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided*, That the pay and allowances of officers and men of the Philippine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this Act when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts. [— *Stat. L.* —.]

[Naval Militia — National Naval Volunteers — transfer to Naval Reserve or Marine Corps Reserve.] * * * That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Naval Appropriation Act of July 1, 1918, ch. —.

The Naval Militia was authorized by the Act of Feb. 16, 1914, ch. 21, 38 Stat. L. 283, was made a part of the militia of the United States by the National Defense Act of June 3, 1916, ch. 134, § 57, 39 Stat. L. 197, and further provisions were made for its organization, composition, etc., by the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 597.

The force known as the National Naval Volunteers was created by the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 595.

All laws relating to these organizations being repealed by the text, they are omitted here.

[Division of Naval Militia Affairs — clerical force and expenses — transfer to Bureau of Navigation.] * * * That the clerical force and office expenses provided for the Division of Naval Militia Affairs shall be transferred to the Bureau of Navigation. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[National Guard — composition — disbursement of appropriations for.] * * * All the money hereinbefore appropriated for arming, equipping, and training the National Guard shall be disbursed and accounted for as such and for that purpose shall constitute one fund: *Provided*. That the National Guard of any State, Territory, or the District of Columbia shall include such officers and enlisted men of the staff corps and departments, corresponding to those of the Regular Army, as may be authorized by the Secretary of War. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Army Appropriation Act of July 9, 1918, ch. —.

[Members of National Guard and Organized Militia in federal service — longevity pay.] * * * That officers and enlisted men of the forces of the Army of the United States other than the Regular Army who have had service in the National Guard and Organized Militia of any State, Territory, or District, but who have entered the service in the forces of the Army of the United States, otherwise than through draft under the provisions of section one hundred and eleven of the Act of June third, nineteen hundred and sixteen, known as the national defense Act, shall be upon the same footing as to pay and allowance as the members of said forces who were drafted under the provisions of said section. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

The Act of June 3, 1916, ch. 134, § 111, mentioned in the text, is given *supra*, p. 458a.

II. HOME GUARDS

An Act To authorize the issue to States and Territories and the District of Columbia of rifles and other property for the equipment of organizations of home guards.

[*Act of June 14, 1917, ch. —, 40 Stat. L.* —.]

[Home guards — arms and equipment.] That the Secretary of War during this existing emergency be, and he is hereby authorized, in his discretion, to issue from time to time to the several States and Territories and the District of Columbia for the equipment of such home guards having the character of State police or constabulary as may be organized by the several States and Territories and District of Columbia, and such other home guards as may be organized under the direction of the governors of the several States and Territories and the Commissioners of the District of Columbia or other State troops or militia, such rifles and ammunition therefor, cartridge belts, haversacks, canteens, in limited amounts as available supplies will permit, provided that the property so issued shall remain the property of the United States and shall be receipted for by the governors of the several States and Territories and Commissioners of the District of Columbia and accounted for by them under such regulations and upon furnishing such bonds or security as the Secretary of War may prescribe, and that any property so issued shall be returned to the United

States on demand when no longer needed for the purposes for which issued, or if, in the judgment of the Secretary of War, an exigency requires the use of the property for Federal purposes: *Provided*, That all home guards, State troops and militia receiving arms and equipments as herein provided shall have the use, in the discretion of the Secretary of War and under such regulations as he may prescribe, of rifle ranges owned or controlled by the United States of America. [40 Stat. L. —.]

MINERAL LANDS, MINES, AND MINING

Act of July 1, 1916, ch. 209, 459.

Sec. 1. Bureau of Mines — Absence of Director — Duties by Whom Performed, 459.

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Sec. 24. Spokane Reservation — Unallotted Mineral Lands — Leases, 459.

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2. Patents — Leases, 462.

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13. Price and Disposal of Mineral Extracted — Regulation by President, 465.

Act of July 1, 1918, ch. —, 465.

Sec. 1. Supplies, etc., for Bureau of Mines, 465.

Platinum, iridium, and palladium and compounds thereof — Statutes and Regulations Affecting, 465.

[SEC. 1.] [Bureau of Mines — absence of director — duties by whom performed.] * * * Hereafter in the absence of the Director of the Bureau of Mines the assistant director of said bureau shall perform the duties of the director during the latter's absence, and in the absence of the Director and of the Assistant Director of the Bureau of Mines the Secretary of the Interior may designate some officer of said bureau to perform the duties of the director during his absence. [39 Stat. L. 303.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For provisions relating to the powers and duties of the Director of the Bureau of Mines with respect of explosives, see EXPLOSIVES, *ante*, p. 178.

SEC. 24. [Spokane Reservation — unallotted mineral lands — leases.]

* * * The Secretary of the Interior is authorized and directed to lease

to citizens of the United States for mining purposes unallotted mineral lands on the diminished Spokane Reservation in the State of Washington for periods of twenty-five years with privileges of renewal, on such reasonable renewal conditions as may be determined by the Secretary of the Interior, and also with reasonable conditions to be fixed by the Secretary of the Interior providing for the prosecution of mining development and operation. Such leases shall be made to applicants in the order in which applications shall be made. Free opportunity shall be given for prospecting of the said lands, and rental shall be based upon mining production, and shall be reasonable, and the proceeds of rental shall be paid into the Spokane Indian tribal fund. [39 Stat. L. 155.]

This is a part of section 24 of the Indian Appropriation Act of May 18, 1916, ch. 125.

Joint Resolution To relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service.

[Res. of July 17, 1917, No. 10, — Stat. L. —.]

[Mining claims — assessment work — owners in military or naval service.] That the provisions of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each mining claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, shall not apply to claims or parts of claims owned by officers or enlisted men who have been or may, during the present war with Germany, be mustered into the military or naval service of the United States to serve during their enlistment in the war with Germany, so that no mining claim or any part thereof owned by such person which has been regularly located and recorded shall be subject to forfeiture for nonperformance of the annual assessments during the period of his service or until six months after such owner is mustered out of the service or until six months after his death in the service: *Provided*, That the claimant of any mining location, in order to obtain the benefits of this resolution, shall file, or cause to be filed, a notice in the office where the location notice or certificate is recorded, before the expiration of the assessment year during which he is so mustered, giving notice of his muster into the service of the United States and of his desire to hold said mining claim under this resolution. [— Stat. L. —.]

For R. S. sec. 2324, mentioned in the text, see 5 Fed. Stat. Ann. 19; 6 Fed. Stat. Ann. (2d ed.) 533.

See the following paragraph of the text.

Joint Resolution To suspend the requirements of annual assessment work on mining claims during the years nineteen hundred and seventeen and nineteen hundred and eighteen.

[*Res. of Oct. 5, 1917, — —, — Stat. L. —.*]

[**Mining claims — assessment work — suspension.**] That in order that labor may be most effectively used in raising and producing those things needed in the prosecution of the present war with Germany, that the provision of section twenty-three hundred and twenty-four of the Revised Statutes of the United States which requires on each mining claim located, and until a patent has been issued therefor, not less than \$100 worth of labor to be performed or improvements to be made during each year, be, and the same is hereby, suspended during the years nineteen hundred and seventeen and nineteen hundred and eighteen: *Provided*, That every claimant of any such mining claim in order to obtain the benefits of this resolution shall file or cause to be filed in the office where the location notice or certificate is recorded on or before December thirty-first, of each of the years nineteen hundred and seventeen and nineteen hundred and eighteen, a notice of his desire to hold said mining claim under this resolution: *Provided further*, That this resolution shall not apply to oil placer locations or claims.

This resolution shall not be deemed to amend or repeal the public resolution entitled "Joint resolution to relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen. [*— Stat. L. —.*]

For R. S. sec. 2324, mentioned in the text, see 5 Fed. Stat. Ann. 19; 6 Fed. Stat. Ann. (2d ed.) 533.

The Res. of July 17, 1917, No. 10, mentioned in the text, is given in the preceding paragraph of the text.

An Act To authorize exploration for and disposition of potassium.

[*Act of Oct. 2, 1917, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Public lands containing potassium — permit to prospect.**] That the Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to issue to any applicant who is a citizen of the United States, an association of such citizens, or a corporation organized under the laws of any State or Territory thereof, a prospecting permit which shall give the exclusive right, for a period not exceeding two years, to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium on public lands of the United States, except lands in and adjacent to Searles Lake, which would be described if surveyed as townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four east, Mount Diablo meridian, California: *Provided*, That the area to be included

in such permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. [— *Stat. L.* —.]

SEC. 2. [Patents — leases.] That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one or more of the substances enumerated in section one hereof have been discovered by the permittee within the area covered by his permit, the permittee shall be entitled to a patent for not to exceed one-fourth of the land embraced in the prospecting permit, to be taken in compact form and described by legal subdivisions of the public-land surveys, or if the land be not surveyed, then in tracts which shall not exceed two miles in length, by survey executed at the cost of the permittee, in accordance with rules and regulations prescribed by the Secretary of the Interior. All other lands described and embraced in such a prospecting permit from and after the exercise of the right to patent accorded to the discoverer, and not covered by leases, may be leased by the Secretary of the Interior, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres, all leases to be conditioned upon the payment by the lessee of such royalty as may be specified in the lease and which shall be fixed by the Secretary of the Interior in advance of offering the same, and which shall not be less than two per centum on the gross value of the output at the point of shipment, which royalty, on demand of the Secretary of the Interior, shall be paid in the product of such lease, and the payment in advance of a rental, which shall be not less than 25 cents per acre for the first year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods, upon condition that at the end of each twenty-year period succeeding the date of any lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods, and a patentee under this section may also be a lessee: *Provided*, That the potash deposits in the public lands in and adjacent to Searles Lake in what would be if surveyed townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four, east, Mount Diablo meridian, California, may be operated by the United States or may be leased by the Secretary of the Interior under the terms and provisions of this Act: *Provided further*, That the Secretary of the Interior may issue leases under the provisions of this Act for deposits of potash in public lands in Sweetwater County, Wyoming, also containing deposits of coal, on condition that the coal be reserved to the United States. [— *Stat. L.* —.]

SEC. 3. [Nonmineral lands for camp sites, refining works, etc.] That in addition to areas of such mineral land to be included in prospecting permits or leases the Secretary of the Interior, in his discretion, may issue to a permittee or lessee under this Act the exclusive right to use, during the life of

the permit or lease, a tract of unoccupied nonmineral public land not exceeding forty acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. [— *Stat. L.* —.]

SEC. 4. [Cancellation of permits or licenses.] That the Secretary of the Interior shall reserve the authority and shall insert in any preliminary permit issued under section one hereof appropriate provisions for its cancellation by him upon failure by the permittee or licensee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit. [— *Stat. L.* —.]

SEC. 5. [Excess holdings prohibited — forfeiture of lease or interest.] That no person shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof which, together with the area embraced in any direct holding or lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, or otherwise, exceeds in the aggregate in any area fifty miles square an amount equivalent to the maximum number of acres allowed to any one lessee under this Act; that no person, association, or corporation holding a lease under the provisions of this Act shall hold more than a tenth interest, direct or indirect, in any other agency, corporate or otherwise, engaged in the sale or resale of the products obtained from such lease; and any violation of the provisions of this section shall be ground for the forfeiture of the lease or interest so held; and the interest held in violation of this provision shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located, except that any such ownership or interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition. [— *Stat. L.* —.]

SEC. 6. [Reservations in leases, etc.— easements — rights of way — disposal of surface of lands.] That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this Act may reserve to the United States the right to dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far

as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease; that the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. [— *Stat. L.* —.]

SEC. 7. [Provisions in lease for protection of public.] That each lease shall contain provisions deemed necessary for the protection of the interests of the United States, and for the prevention of monopoly, and for the safeguarding of the public welfare. [— *Stat L.* —.]

SEC. 8. [Forfeiture of lease — failure of lessee to comply with statute, etc.] That any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property or some part thereof is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease, and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. [— *Stat. L.* —.]

SEC. 9. [Application of Act to all deposits of potassium salts.] That the provisions of this Act shall also apply to all deposits of potassium salts in the lands of the United States which may have been or may be disposed of under laws reserving to the United States the potassium deposits with the right to prospect for, drill, mine, and remove the same, subject to such conditions as to the use and occupancy of the surface as are or may hereafter be provided by law. [— *Stat. L.* —.]

SEC. 10. [Royalties and rentals — disposition of moneys received.] That all moneys received from royalties and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act, but after use thereof in the construction of reclamation works, and upon return to the reclamation fund of any such moneys in the manner provided by the reclamation Act and Acts amendatory thereof and supplemental thereto, fifty per centum of the amounts derived from such royalties and rentals, so utilized in and returned to the reclamation fund shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools. [— *Stat. L.* —.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 11. [Rules and regulations.] That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act. [— *Stat. L.* —.]

SEC. 12. [Deposits disposed of in form and manner herein provided — rights of state.] That the deposits herein referred to, in lands valuable for such minerals, shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws: *Provided*, That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee. [— *Stat. L.* —.]

SEC. 13. [Price and disposal of mineral extracted — regulation by President.] That the Secretary of the Interior is hereby authorized and directed to incorporate in every lease issued under the provisions of this Act a provision reserving to the President the right to regulate the price of all mineral extracted and sold from the leased premises, which stipulation shall specifically provide that the price or prices fixed shall be such as to yield a fair and reasonable return to the lessee upon his investment and to secure to the consumer any of such products at the lowest price reasonable and consistent with the foregoing: *Provided*, That such lease issued under this Act shall also stipulate that the President shall have authority to so regulate the disposal of the potassium products produced under such lease as to secure its distribution and use wholly within the limits of the United States or its possessions.

[SEC. 1.] [Supplies, etc., for Bureau of Mines.] * * * The purchase of supplies and equipment or the procurement of services for the Bureau of Mines outside of the District of Columbia, hereafter may be made in open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [— *Stat. L.* —.]

This and the following paragraph are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Platinum, iridium and palladium and compounds thereof — statutes and regulations affecting.] * * * That platinum, iridium, and palladium and compounds thereof are hereby made subject to the terms, conditions, and limitations of said Act of October sixth, nineteen hundred and seventeen, and the Director of the Bureau of Mines is hereby authorized, under rules and regulations approved by the Secretary of the Interior, to limit the sale, possession, and the use of said material. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

MUNITION TAX

See INTERNAL REVENUE

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CROSS-REFERENCE

Federal Farm Loan Act, see AGRICULTURE

I. OBTAINING AND ISSUING CIRCULATING NOTES

An Act To amend the laws relating to the denominations of circulating notes by national banks and to permit the issuance of notes of small denominations, and for other purposes.

[Act of Oct. 5, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Circulating notes — denominations — less than five dollars — R. S. sec. 5175 repealed.] That the Act of June third, eighteen hundred and sixty-four, Revised Statutes, section fifty-one hundred and seventy-five, which prohibits national banks from being furnished with notes of less denomination than \$5, be, and it is hereby, repealed. *[— Stat. L. —.]*

For R. S. sec. 5175, repealed by this section, see 5 Fed. Stat. Ann. 119; 6 Fed. Stat. Ann. (2d ed.) 732.

SEC. 2. [Denominations — five dollars — former provisions repealed.] That that part of the Act of March fourteenth, nineteen hundred, which provides “that no national banking association shall, after the passage of this Act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue, or place in circulation more than one-third in amount of its circulating notes of the denomination of \$5,” be, and it is hereby, repealed. *[— Stat. L. —.]*

For the provisions of the Act of March 14, 1900, ch. 41, § 12, repealed by this section, see 5 Fed. Stat. Ann. 117; 6 Fed. Stat. Ann. (2d ed.) 739.

SEC. 3. [Denominations — amounts authorized.] That from and after the passage of this Act any national banking association, upon compliance with the provisions of law applicable thereto, shall be entitled to receive

from the Comptroller of the Currency, or to issue or reissue, or place in circulation notes in denominations of \$1, \$2, \$5, \$10, \$20, \$50, and \$100 in such proportion as to each of said denominations as the bank may elect: *Provided, however*, That no bank shall receive or have in circulation at any one time more than \$25,000 in notes of the denominations of \$1 and \$2. [— *Stat. L.* —.]

SEC. 4. [Inconsistent laws — repeal.] That all Acts or parts of Acts which are inconsistent with this Act are hereby repealed. [— *Stat. L.* —.]

II. REGULATION OF THE BANKING BUSINESS

SEC. 20. [Limit upon indebtedness to be incurred — R. S. sec. 5202 amended.] Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows:

“SEC. 5202. No national banking association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

“First. Notes of circulation.

“Second. Moneys deposited with or collected by the association.

“Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

“Fourth. Liabilities to the stockholders of the association or dividends and reserve profits.

“Fifth. Liabilities incurred under the provisions of the Federal Reserve Act.

“Sixth. Liabilities incurred under the provisions of the War Finance Corporation Act.” [— *Stat. L.* —.]

This is section 20 of the Act of April 5, 1918, ch. —, creating the “War Finance Corporation.” The Act will be found under this title CORPORATIONS, *supra*, p. 107.

For R. S. sec. 5202, amended by the text, see 5 Fed. Stat. Ann. 141; 6 Fed. Stat. Ann. (2d ed.) 765.

Said R. S. sec. 5202 had previously been amended by the Act of Sept. 7, 1916, ch. 461, 39 Stat. L. 753, in the following terms: “Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows: ‘No national banking association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

“First. Notes of circulation.

“Second. Moneys deposited with or collected by the association.

“Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

“Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

“Fifth. Liabilities incurred under the provisions of the Federal reserve Act.

“The discount and rediscount and the purchase and sale by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized by this Act, shall be subject to such restrictions, limitations, and regulations as may be imposed by the Federal Reserve Board.

“That in addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and

regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent; and may also act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission: *Provided, however,* That no such bank shall in any case guarantee either the principal or interest of any such loans or assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further,* That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

“Any member bank may accept drafts or bills of exchange drawn upon it having not more than three months’ sight to run, exclusive of days of grace, drawn under regulations to be prescribed by the Federal Reserve Board by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions. Such drafts or bills may be acquired by Federal reserve banks in such amounts and subject to such regulations, restrictions, and limitations as may be prescribed by the Federal Reserve Board: *Provided, however,* That no member bank shall accept such drafts or bills of exchange referred to this paragraph for any one bank to an amount exceeding in the aggregate ten per centum of the paid-up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security: *Provided further,* That no member bank shall accept such drafts or bills in an amount exceeding at any time the aggregate of one-half its paid-up and unimpaired capital and surplus.”

An Act Authorizing national banks to subscribe to the American National Red Cross.

[*Act of May 22, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Contributions to Red Cross — report.] That during the continuance of the state of war now existing it shall be lawful for any national banking association to contribute to the American National Red Cross, out of any net profits otherwise available under the law for the declaration of dividends, such sum or sums as the directors of said association shall deem expedient. Each association shall report to the Comptroller of the Currency within ten days after the making of any such contribution the amount of such contribution and the amount of net earnings in excess of such contribution. Such report shall be attested by the president or cashier of the association in like manner as the report of the declaration of any dividend. [*— Stat. L. —.*]

SEC. 2. [Use of contributed funds.] That all sums so contributed shall be utilized by the American National Red Cross in furnishing volunteer aid to the sick and wounded of the combatant armies, the voluntary relief of the Army and Navy of the United States, and the relief and mitigation of the suffering caused by the war to the people of the United States and their allied nations. [*— Stat. L. —.*]

III. FEDERAL RESERVE BANKS

An Act To amend certain sections of the Act entitled “ Federal reserve Act ” approved December twenty-third, nineteen hundred and thirteen.

[*Act of Sept. 7, 1916, ch. 461, 39 Stat. L. 752.*]

[**Member banks — reserves — where kept — Federal reserve Act, sec. 11, amended.**] That the Act entitled “ Federal reserve Act,” approved December twenty-third, nineteen hundred and thirteen, be, and is hereby, amended as follows:

At the end of section eleven insert a new clause as follows:

“(m) Upon the affirmative vote of not less than five of its members the Federal Reserve Board shall have power, from time to time, by general ruling, covering all districts alike, to permit member banks to carry in the Federal reserve banks of their respective districts any portion of their reserves now required by section nineteen of this Act to be held in their own vaults.”

For the Federal Reserve Act of Dec. 23, 1913, ch. 260, § 11, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 271; 6 Fed. Stat. Ann. (2d ed.) §28.

[**Powers of Federal reserve banks — deposits — discounts — Federal Reserve Act, sec. 13, amended.**] That section thirteen be, and is hereby, amended to read as follows:

“Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing bills; or solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, and maturing bills payable within its district.

“Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Federal Reserve Board to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than **ninety days**,

exclusive of days of grace: *Provided*, That notes, drafts, and bills drawn or issued for agricultural purposes or based on live stock and having a maturity not exceeding six months, exclusive of days of grace, may be discounted in an amount to be limited to a percentage of the assets of the Federal reserve bank, to be ascertained and fixed by the Federal Reserve Board.

“The aggregate of such notes, drafts, and bills bearing the signature or indorsement of any one borrower, whether a person, company, firm, or corporation, rediscounted for any one bank shall at no time exceed ten per centum of the unimpaired capital and surplus of said bank; but this restriction shall not apply to the discount of bills of exchange drawn in good faith against actually existing values.

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than three months' sight, exclusive of days of grace, and which are indorsed by at least one member bank.

“Any member bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No member bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per cent of its paid-up and unimpaired capital stock and surplus unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus.

“Any Federal reserve bank may make advances to its member banks on their promissory notes for a period not exceeding fifteen days at rates to be established by such Federal reserve banks, subject to the review and determination of the Federal Reserve Board, provided such promissory notes are secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks under the provisions of this Act, or by the deposit or pledge of bonds or notes of the United States.” * * *

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 273; 6 Fed. Stat. Ann. (2d ed.) 831.

This section was subsequently amended by the Act of June 21, 1917, ch. —, §§ 4, 5, *infra*, p. 478.

A portion of this paragraph, omitted here, amended R. S. sec. 5202, and is given *supra*, p. 468 note.

[Establishment of accounts — agencies — purchase, etc., of bills of exchange — Federal reserve Act, sec. 14, subsec. (e) amended.] That subsection (e) of section fourteen, be, and is hereby, amended to read as follows:

“(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent of the Federal Reserve Board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may deem best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its indorsement, through such correspondents or agencies bills of exchange arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Federal Reserve Board, to open and maintain banking accounts for such foreign correspondents or agencies.”

For the Act of Dec. 23, 1913, ch. 260, § 14, subsection (e), amended by the paragraph, see 1914 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 833.

Said subdivision (e) amended by this paragraph was subsequently amended by the Act of June 21, 1917, ch. —, § 6, *infra*, p. 479.

[**Note issues — regulations — Federal reserve Act, sec. 16 amended.**] That the second paragraph of section sixteen be, and is hereby, amended to read as follows:

“Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances rediscounted under the provisions of section thirteen of this Act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section fourteen of this Act, or bankers’ acceptances purchased under the provisions of said section fourteen. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.”

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The second paragraph of said section 16 amended by the text was again amended by the Act of June 21, 1917, ch. —, § 7, *infra*, p. 480.

[**Loans on farm lands — Federal reserve Act, sec. 24 amended.**] That section twenty-four be, and is hereby, amended to read as follows:

“SEC. 24. Any national banking association not situated in a central reserve city may make loans secured by improved and unencumbered farm land situated within its Federal reserve district or within a radius of one hundred miles of the place in which such bank is located, irrespective of district lines, and may also make loans secured by improved and unencumbered real estate located within one hundred miles of the place in which such bank is located, irrespective of district lines; but no loan made upon the security of such farm land shall be made for a longer time than five

years, and no loan made upon the security of such real estate as distinguished from farm land shall be made for a longer time than one year nor shall the amount of any such loan, whether upon such farm land or upon such real estate, exceed fifty per centum of the actual value of the property offered as security. Any such bank may make such loans, whether secured by such farm land or such real estate, in an aggregate sum equal to twenty-five per centum of its capital and surplus or to one-third of its time deposits and such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same.

“The Federal Reserve Board shall have power from time to time to add to the list of cities in which national banks shall not be permitted to make loans secured upon real estate in the manner described in this section.”

For the Act of Dec. 23, 1913, ch. 260, § 24, amended by the text, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 841.

[Foreign branches — Federal reserve Act, sec. 25 amended.] That section twenty-five be, and is hereby, amended to read as follows:

“SEC. 25. Any national banking association possessing a capital and surplus of \$1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

“First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

“Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

“Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

“Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described under subparagraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the Federal Reserve Board upon demand, and the Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

"Before any national bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the Federal Reserve Board to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Federal Reserve Board shall ascertain that the regulations prescribed by it are not being complied with, said board is hereby authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the said Federal Reserve Board, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

"Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

"Any director or other officer, agent, or employee of any member bank may, with the approval of the Federal Reserve Board, be a director or other officer, agent, or employee of any such bank or corporation above mentioned in the capital stock of which such member bank shall have invested as hereinbefore provided, without being subject to the provisions of section eight of the Act approved October fifteenth, nineteen hundred and fourteen, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.' " [39 Stat. L. 752.]

For the Act of Dec. 23, 1913, ch. 26, § 25, amended by the text, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 842.

For the Clayton Act of Oct. 15, 1914, ch. 323, mentioned in the last paragraph of the text, see 1916 Supp. Fed. Stat. Ann. 267; 9 Fed. Stat. Ann. (2d ed.) 750.

An Act To amend the Act approved December twenty-third, nineteen hundred and thirteen, known as the Federal reserve Act, as amended by the Acts of August fourth, nineteen hundred and fourteen, August fifteenth, nineteen hundred and fourteen, March third, nineteen hundred and fifteen, and September seventh, nineteen hundred and sixteen.

[Act of June 21, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Branch banks — directors — Federal reserve Act, sec. 3, amended.] That section three of the Act known as the Federal reserve Act be amended and reenacted so as to read as follows:

"SEC. 3. The Federal Reserve Board may permit or require any Federal reserve bank to establish branch banks within the Federal reserve dis-

trict in which it is located or within the district of any Federal reserve bank which may have been suspended. Such branches, subject to such rules and regulations as the Federal Reserve Board may prescribe, shall be operated under the supervision of a board of directors to consist of not more than seven nor less than three directors, of whom a majority of one shall be appointed by the Federal reserve bank of the district, and the remaining directors by the Federal Reserve Board. Directors of branch banks shall hold office during the pleasure of the Federal Reserve Board." [— *Stat. L.* —.]

For the Federal Reserve Act of Dec. 23, 1913, ch. 260, § 3, amended by this section, see 1914 Supp. Fed. Stat. Ann. 263; 6 Fed. Stat. Ann. (2d ed.) 819.

SEC. 2. [Reserve banks — class C directors — reserve agents — assistants — Federal reserve Act, sec. 4, amended.] That section four in the paragraph relating to the appointment of class C directors and prescribing their duties be amended and reenacted so as to read as follows:

"Class C directors shall be appointed by the Federal Reserve Board. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal reserve bank and as 'Federal reserve agent.' He shall be a person of tested banking experience, and in addition to his duties as chairman of the board of directors of the Federal reserve bank he shall be required to maintain, under regulations to be established by the Federal Reserve Board, a local office of said board on the premises of the Federal reserve bank. He shall make regular reports to the Federal Reserve Board and shall act as its official representative for the performance of the functions conferred upon it by this Act. He shall receive an annual compensation to be fixed by the Federal Reserve Board and paid monthly by the Federal reserve bank to which he is designated. One of the directors of class C shall be appointed by the Federal Reserve Board as deputy chairman to exercise the powers of the chairman of the board when necessary. In case of the absence of the chairman and deputy chairman, the third class C director shall preside at meetings of the board.

"Subject to the approval of the Federal Reserve Board, the Federal reserve agent shall appoint one or more assistants. Such assistants, who shall be persons of tested banking experience, shall assist the Federal reserve agent in the performance of his duties and shall also have power to act in his name and stead during his absence or disability. The Federal Reserve Board shall require such bonds of the assistant Federal reserve agents as it may deem necessary for the protection of the United States. Assistants to the Federal reserve agent shall receive an annual compensation, to be fixed and paid in the same manner as that of the Federal reserve agent." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 4, amended by this section, see 1914 Supp. Fed. Stat. Ann. 263; 6 Fed. Stat. Ann. (2d ed.) 820.

SEC. 3. [State banks as members — stock — admission — laws applicable — cancellation of membership — Federal reserve Act, sec. 9,

amended.] That section nine be amended and reenacted so as to read as follows:

" SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, desiring to become a member of the Federal Reserve System, may make application to the Federal Reserve Board, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. The Federal Reserve Board, subject to such conditions as it may prescribe, may permit the applying bank to become a stockholder of such Federal reserve bank.

" In acting upon such applications the Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this Act.

" Whenever the Federal Reserve Board shall permit the applying bank to become a stockholder in the Federal reserve bank of the district its stock subscription shall be payable on call of the Federal Reserve Board, and stock issued to it shall be held subject to the provisions of this Act.

" All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this Act and to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock, which relate to the withdrawal or impairment of their capital stock, and which relate to the payment of unearned dividends. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by section fifty-two hundred and nine of the Revised Statutes, and shall be required to make reports of condition and of the payment of dividends to the Federal reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal reserve bank on dates to be fixed by the Federal Reserve Board. Failure to make such reports within ten days after the date they are called for shall subject the offending bank to a penalty of \$100 a day for each day that it fails to transmit such report; such penalty to be collected by the Federal reserve bank by suit or otherwise.

" As a condition of membership such banks shall likewise be subject to examinations made by direction of the Federal Reserve Board or of the Federal reserve bank by examiners selected or approved by the Federal Reserve Board.

" Whenever the directors of the Federal reserve bank shall approve the examinations made by the State authorities, such examinations and the reports thereof may be accepted in lieu of examinations made by examiners selected or approved by the Federal Reserve Board: *Provided, however,* That when it deems it necessary the board may order special examinations, by examiners of its own selection and shall in all cases approve the form of the report. The expenses of all examinations, other than those made by State authorities, shall be assessed against and paid by the banks examined.

" If at any time it shall appear to the Federal Reserve Board that a

member bank has failed to comply with the provisions of this section or the regulations of the Federal Reserve Board made pursuant thereto, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Federal Reserve Board may restore membership upon due proof of compliance with the conditions imposed by this section.

"Any State bank or trust company desiring to withdraw from membership in a Federal reserve bank may do so, after six months' written notice shall have been filed with the Federal Reserve Board, upon the surrender and cancellation of all of its holdings of capital stock in the Federal reserve bank: *Provided, however,* That no Federal reserve bank shall, except under express authority of the Federal Reserve Board, cancel within the same calendar year more than twenty-five per centum of its capital stock for the purpose of effecting voluntary withdrawals during that year. All such applications shall be dealt with in the order in which they are filed with the board. Whenever a member bank shall surrender its stock holdings in a Federal reserve bank, or shall be ordered to do so by the Federal Reserve Board, under authority of law, all of its rights and privileges as a member bank shall thereupon cease and determine, and after due provision has been made for any indebtedness due or to become due to the Federal reserve bank it shall be entitled to a refund of its cash paid subscription with interest at the rate of one-half of one per centum per month from date of last dividend, if earned, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to repayment of deposits and of any other balance due from the Federal reserve bank.

"No applying bank shall be admitted to membership in a Federal reserve bank unless it possesses a paid-up unimpaired capital sufficient to entitle it to become a national banking association in the place where it is situated under the provisions of the national-bank Act.

"Banks becoming members of the Federal Reserve System under authority of this section shall be subject to the provisions of this section and to those of this Act which relate specifically to member banks, but shall not be subject to examination under the provisions of the first two paragraphs of section fifty-two hundred and forty of the Revised Statutes as amended by section twenty-one of this Act. Subject to the provisions of this Act and to the regulations of the board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks: *Provided, however,* That no Federal reserve bank shall be permitted to discount for any State bank or trust company notes, drafts, or bills of exchange of any one borrower who is liable for borrowed money to such State bank or trust company in an amount greater than ten per centum of the capital and surplus of such State bank or trust company, but the discount of bills of exchange drawn against actually existing value and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money within

the meaning of this section. The Federal reserve bank, as a condition of the discount of notes, drafts, and bills of exchange for such State bank or trust company, shall require a certificate or guaranty to the effect that the borrower is not liable to such bank in excess of the amount provided by this section, and will not be permitted to become liable in excess of this amount while such notes, drafts, or bills of exchange are under discount with the Federal reserve bank.

"It shall be unlawful for any officer, clerk, or agent of any bank admitted to membership under authority of this section to certify any check drawn upon such bank unless the person or company drawing the check has on deposit therewith at the time such check is certified an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against such bank, but the act of any such officer, clerk, or agent in violation of this section may subject such bank to a forfeiture of its membership in the Federal Reserve System upon hearing by the Federal Reserve Board." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 9, amended by this section, see 1914 Supp. Fed. Stat. Ann. 268; 6 Fed. Stat. Ann. (2d ed.) 825.

SEC. 4. [Powers of Federal reserve banks — Federal reserve Act, sec. 13 amended.] That the first paragraph of section thirteen be further amended and reenacted so as to read as follows:

"Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: *Provided*, Such nonmember bank or trust company maintains with the Federal reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank: *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection, or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this section, see 1914 Supp. Fed. Stat. Ann. 373; 6 Fed. Stat. Ann. (2d ed.) 831.

The paragraph amended by this section was previously amended by the Act of Sept. 7, 1916, ch. 461, *supra*, p. 470.

SEC. 5. [Powers of Federal reserve banks — Federal reserve Act, sec. 13 amended.] That the fifth paragraph of section thirteen be further amended and reenacted so as to read as follows:

“Any member bank may accept drafts or bills of exchange drawn upon it having not more than six months right to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No member bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus: *Provided, however,* That the Federal Reserve Board, under such general regulations as it may prescribe, which shall apply to all banks alike regardless of the amount of capital stock and surplus, may authorize any member bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus: *Provided, further,* That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus.”
[— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this section, see 1914 Supp. Fed. Stat. Ann. 373; 6 Fed. Stat. Ann. (2d ed.) 831.

SEC. 6. [Open-market operations — Federal reserve Act, sec. 14, subsec. (e) amended.] That section fourteen, subsection (e), be amended and reenacted so as to read as follows:

“(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent or upon the order and direction of the Federal Reserve Board and under regulations to be prescribed by said Board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may be deemed best for the purposes of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its endorsement, through such correspondents or agencies, bills of exchange (or acceptances) arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Federal Reserve Board, to open and maintain banking accounts for such foreign correspondents or agencies. Whenever any such account has been opened or agency or correspondent has been appointed by a Federal reserve bank, with the consent of or under the order and direction of the Federal Reserve Board, any other Federal reserve bank may, with the consent and approval of the Federal Reserve Board, be permitted to carry on or conduct, through

the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board.” [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 14, subsec. 8, amended by this section, see 1914 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 833.

SEC. 7. [Note issues — regulations — Federal reserve Act, sec. 16 amended.] That section sixteen, paragraphs two, three, four, five, six, and seven, be further amended and reenacted so as to read as follows:

“Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section thirteen of this Act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section fourteen of this Act, or bankers’ acceptances purchased under the provisions of said section fourteen, or gold or gold certificates; but in no event shall such collateral security, whether gold, gold certificates, or eligible paper, be less than the amount of Federal reserve notes applied for. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.

“Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation: *Provided, however,* That when the Federal reserve agent holds gold or gold certificates as collateral for Federal reserve notes issued to the bank such gold or gold certificates shall be counted as part of the gold reserve which such bank is required to maintain against its Federal reserve notes in actual circulation. Notes so paid out shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Federal Reserve Board to each Federal reserve bank. Whenever Federal reserve notes issued through one Federal reserve bank shall be received by another Federal reserve bank, they shall be promptly returned for credit or redemption to the Federal reserve bank through which they were originally issued or, upon direction of such Federal reserve bank, they shall be forwarded direct to the Treasurer of the United States to be retired. No Federal reserve bank shall pay out notes issued through another under penalty of a tax of ten per centum upon the face value of notes so paid out. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal reserve banks through which they were originally issued, and thereupon such Federal reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal reserve notes have been redeemed by the

Treasurer in gold or gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold or gold certificates, and such Federal reserve bank shall, so long as any of its Federal reserve notes remain outstanding, maintain with the Treasurer in gold an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal reserve notes by the Treasurer otherwise than for redemption may be exchanged for gold out of the redemption fund hereinafter provided and returned to the reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal reserve notes unfit for circulation shall be returned by the Federal reserve agents to the Comptroller of the Currency for cancellation and destruction.

“The Federal Reserve Board shall require each Federal reserve bank to maintain on deposit in the Treasury of the United States a sum in gold sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal reserve notes issued to such bank, but in no event less than five per centum of the total amount of notes issued less the amount of gold or gold certificates held by the Federal reserve agent as collateral security; but such deposit of gold shall be counted and included as part of the forty per centum reserve hereinbefore required. The board shall have the right, acting through the Federal reserve agent, to grant, in whole or in part, or to reject entirely the application of any Federal reserve bank for Federal reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal reserve agent, supply Federal reserve notes to the banks so applying, and such bank shall be charged with the amount of notes issued to it and shall pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal reserve notes less the amount of gold or gold certificates held by the Federal reserve agent as collateral security. Federal reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal reserve bank as may be issued under section eighteen of this Act upon security of United States two per centum Government bonds, become a first and paramount lien on all the assets of such bank.

“Any Federal reserve bank may at any time reduce its liability for outstanding Federal reserve notes by depositing with the Federal reserve agent its Federal reserve notes, gold, gold certificates, or lawful money of the United States. Federal reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

“The Federal reserve agent shall hold such gold, gold certificates, or lawful money available exclusively for exchange for the outstanding Federal reserve notes when offered by the reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal reserve agent to transmit to the Treasurer of the United States so much of the gold held by him as collateral security for Federal reserve notes as may be required for the exclusive purpose of the redemption of such Federal reserve notes, but such gold when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal reserve agent.

“Any Federal reserve bank may at its discretion withdraw collateral

deposited with the local Federal reserve agent for the protection of its Federal reserve notes issued to it and shall at the same time substitute therefor other collateral of equal amount with the approval of the Federal reserve agent under regulations to be prescribed by the Federal Reserve Board. Any Federal reserve bank may retire any of its Federal reserve notes by depositing them with the Federal reserve agent or with the Treasurer of the United States, and such Federal reserve bank shall thereupon be entitled to receive back the collateral deposited with the Federal reserve agent for the security of such notes. Federal reserve banks shall not be required to maintain the reserve or the redemption fund heretofore provided for against Federal reserve notes which have been retired. Federal reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue."

All Federal reserve notes and all gold, gold certificates, and lawful money issued to or deposited with any Federal reserve agent under the provisions of the Federal reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal reserve bank to which he is accredited. Such agent and such Federal reserve bank shall be jointly liable for the safe-keeping of such Federal reserve notes, gold, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal reserve agent from depositing gold or gold certificates with the Federal Reserve Board, to be held by such board subject to his order, or with the Treasurer of the United States for the purposes authorized by law. [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 16, amended by this section, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The second paragraph of said section 16, amended by the text, had been previously amended by the Act of Sept. 7, 1916, ch. 461, *supra*, p. 472.

The last paragraph of this section would not seem to be a part of the amending provisions, but, for convenience, is retained here.

SEC. 8. [Gold deposits — Federal reserve Act, sec. 16 amended.] That section sixteen be further amended by adding at the end of the section the following:

" That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin or of gold certificates with the Treasurer or any assistant treasurer of the United States when tendered by any Federal reserve bank or Federal reserve agent for credit to its or his account with the Federal Reserve Board. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal reserve bank or Federal reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Federal Reserve Board by the Treasurer at Washington upon proper advices from any assistant treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Federal Reserve Board and shall be payable in gold coin or gold certificates on the order of the Federal Reserve Board to any Federal reserve bank or Federal reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal reserve bank or such Federal reserve agent: *Provided, however,* That any expense incurred in shipping

gold to or from the Treasury or Subtreasuries in order to make such payments, or as a result of making such payments, shall be paid by the Federal Reserve Board and assessed against the Federal reserve banks. The order used by the Federal Reserve Board in making such payments shall be signed by the governor or vice governor, or such other officers or members as the board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury.

"The expenses necessarily incurred in carrying out these provisions, including the cost of the certificates or receipts issued for deposits received, and all expenses incident to the handling of such deposits shall be paid by the Federal Reserve Board and included in its assessments against the several Federal reserve banks.

"Gold deposits standing to the credit of any Federal reserve bank with the Federal Reserve Board shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal reserve notes, or as a part of the reserve it is required to maintain against deposits.

"Nothing in this section shall be construed as amending section six of the Act of March fourteenth, nineteen hundred, as amended by the Acts of March fourth, nineteen hundred and seven, March second, nineteen hundred and eleven, and June twelfth, nineteen hundred and sixteen, nor shall the provisions of this section be construed to apply to the deposits made or to the receipts or certificates issued under those Acts."

[— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 16, amended by this section, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The Act of March 14, 1900, ch. 41, § 6, mentioned in the last paragraph of the text, is given as amended in 2 Fed. Stat. Ann. (2d ed.) 349.

SEC. 9. [Registered bonds — repeal of provisions requiring — Federal reserve Act, sec. 17 amended.] That section seventeen be amended and reenacted so as to read as follows:

"SEC. 17. So much of the provisions of section fifty-one hundred and fifty-nine of the Revised Statutes of the United States, and section four of the Act of June twentieth, eighteen hundred and seventy-four, and section eight of the Act of July twelfth, eighteen hundred and eighty-two, and of any other provisions of existing statutes as require that before any national banking association shall be authorized to commence banking business it shall transfer and deliver to the Treasurer of the United States a stated amount of United States registered bonds, and so much of those provisions or of any other provisions of existing statutes as require any national banking association now or hereafter organized to maintain a minimum deposit of such bonds with the Treasurer is hereby repealed." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 17, amended by this section, see 1914 Supp. Fed. Stat. Ann. 277; 6 Fed. Stat. Ann. (2d ed.) 836.

SEC. 10. [Bank reserves — Federal reserve Act, sec. 19 amended.] That section nineteen be further amended and reenacted so as to read as follows:

“ SEC. 19. Demand deposits within the meaning of this Act shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment, and all postal savings deposits.

“ Every bank, banking association, or trust company which is or which becomes a member of any Federal reserve bank shall establish and maintain reserve balances with its Federal reserve bank as follows:

“ (a) If not in a reserve or central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than seven per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

“ (b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than ten per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

“ (c) If in a central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than thirteen per centum of the aggregate amounts of its demand deposits and three per centum of its time deposits.

“ No member bank shall keep on deposit with any State bank or trust company which is not a member bank a sum in excess of ten per centum of its own paid-up capital and surplus. No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this Act, except by permission of the Federal Reserve Board.

“ The required balance carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: *Provided, however,* That no bank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored.

“ In estimating the balances required by this Act, the net difference of amounts due to and from other banks shall be taken as the basis for ascertaining the deposits against which required balances with Federal reserve banks shall be determined.

“ National banks, or banks organized under local laws, located in Alaska or in a dependency or insular possession or any part of the United States outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this Act.” [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 19, amended by this section, see 1914 Supp. Fed. Stat. Ann. 279; 6 Fed. Stat. Ann. (2d ed.) 838.

This section was affected, as to the disposition of reserves, by the first paragraph of the Act of Sept. 7, 1916, ch. 461, *supra*, p. 470.

SEC. 11. [Fee or gift to officer or employee — Federal reserve Act, sec. 22 amended.] That that part of section twenty-two which reads as follows: "Other than the usual salary or director's fees paid to any officer, director, or employee of a member bank and other than a reasonable fee paid by said bank to such officer, director, or employee for service rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank," be amended and reenacted so as to read as follows:

"Other than the usual salary or director's fee paid to any officer, director, employee, or attorney of a member bank, and other than a reasonable fee paid by said bank to such officer, director, employee, or attorney for services rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank: *Provided, however,* That nothing in this Act contained shall be construed to prohibit a director, officer, employee, or attorney from receiving the same rate of interest paid to other depositors for similar deposits made with such bank: *And provided further,* That notes, drafts, bills of exchange, or other evidences of debt executed or indorsed by directors or attorneys of a member bank may be discounted with such member bank on the same terms and conditions as other notes, drafts, bills of exchange, or evidences of debt upon the affirmative vote or written assent of at least a majority of the members of the board of directors of such member bank." [— *Stat. L. —*.]

For the Act of Dec. 23, 1913, ch. 260, § 22, amended by this Act, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 926.

IV. DISSOLUTION AND RECEIVERSHIP

An Act To amend section fifty-two hundred and thirty-four of the Revised Statutes of the United States so as to permit the Comptroller of the Currency to deposit upon interest the assets of insolvent national banks in other national banks of the same or of an adjacent city or town.

[*Act of May 15, 1916, ch. 121, 39 Stat. L. 121.*]

[Insolvent national banks — deposit of assets — interest — R. S. sec. 5234 amended.] That section fifty-two hundred and thirty-four of the Revised Statutes of the United States be amended by adding at the end thereof the following:

"*Provided,* That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the

United States for the safe-keeping and prompt payment of the money so deposited. Such depositary shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than two per centum per annum upon the average monthly amount of such deposits." [39 Stat. L. 121.]

For R. S. sec. 5234, amended by this Act, see 5 Fed. Stat. Ann. 170; 6 Fed. Stat. Ann. (2d ed.) 851.

NATIONAL DEFENSE ACT

See MILITIA; WAR DEPARTMENT AND MILITARY ESTABLISHMENT

NATIONAL DEFENSE SECRETS

See CRIMINAL LAW

NATIONAL GUARD

See MILITIA

NATIONAL PARKS

See PUBLIC PARKS

NATURALIZATION

Act of Aug. 11, 1916, ch. 316, 487.

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An Act To validate certain declarations of intention to become citizens of the United States.

[*Act of Aug. 11, 1916, ch. 316, 39 Stat. L. 505.*]

[**Declarations of intention — validation.**] That declarations of intention to become citizens of the United States filed prior to the passage of this Act in the counties of Cascade, Chouteau, Teton, Hill, Blaine, and Valley, State of Montana, under the act approved June twenty-ninth, nineteen hundred and six, entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States," as amended by the Acts of March fourth, nineteen hundred and nine, June twenty-fifth, nineteen hundred and ten, and March fourth, nineteen hundred and thirteen, are hereby declared to be as legal and valid as if such declarations of intention had been filed in the judicial district in which the declarants resided, as required by section four of said Act of June twenty-ninth, nineteen hundred and six, and that the petitions for naturalization dismissed on account of such invalidity in the declaration of intention shall be given a rehearing without additional cost, upon informal application therefor by the candidate for citizenship to the clerk of the court upon notice to the Bureau of Naturalization: *Provided*, That such declarations of intention shall not be by this Act further validated or legalized and that this Act shall apply only to those persons who have heretofore made homestead, desert land or timber and stone entries. [39 Stat. L. 505.]

For the Act of June 29, 1906, ch. 3592, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 365.

For the Act of March 4, 1909, ch. 321, § 77, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 425.

For the Act of June 25, 1910, ch. 401, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 276.

For the Act of March 4, 1913, ch. 141, § 3, mentioned in the text see 1914 Supp. Fed. Stat. Ann. 242.

Said Act of June 29, 1906, ch. 3592, as amended by the Act of June 25, 1910, ch. 401, mentioned in the text, is given in 6 Fed. Stat. Ann. (2d ed.) 952.

The amending Act of March 4, 1909, ch. 321, § 77, mentioned in the text, was one of the sections of the Penal Code, and is given in 7 Fed. Stat. Ann. (2d ed.) 634.

The amending Act of March 4, 1913, ch. 141, § 3, mentioned in the text, is given in 6 Fed. Stat. Ann. (2d ed.) 939.

[SEC. 1.] [Clerks of courts and assistants — fees.] * * * That the whole amount allowed for a fiscal year to the clerk of a court and his assistants from naturalization fees and this appropriation or any similar appropriation made hereafter shall be based upon and not exceed the one-half of the gross receipts of said clerk from naturalization fees during the fiscal year immediately preceding, unless the naturalization business

of the clerk of any court during the year shall be in excess of the naturalization business of the preceding year, in which event the amount allowed may be increased to an amount equal to one-half the estimated gross receipts of the said clerk naturalization fees during the current fiscal year. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

An Act To amend the naturalization laws and to repeal certain sections of the Revised Statutes of the United States and other laws relating to naturalization, and for other purposes.

[*Act of May 9, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Proceedings for naturalization — persons in military or naval service — fees — former Act amended.] That section four of the Act entitled “An Act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States,” approved June twenty-ninth, nineteen hundred and six, be, and is hereby, amended by adding seven new subdivisions as follows:

“Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years’ residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years’ residence within the United States; any alien declarant who has served in the United States Army or Navy, or the

Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the Act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this Act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of

allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavit and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the Act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the Act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the Act of June twenty-ninth, nineteen hundred and six. [— *Stat. L.* —.]

For Act of June 29, 1906, ch. 3592, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 365; 6 Fed. Stat. Ann. (2d ed.) 952.

Temporary naturalization.—*An alien soldier in the service of the army, who upon his examination states that it is not his intention to reside permanently in the United States, but that it is his intention, upon his discharge from the service, to return to his native country and remain there permanently, is not entitled to naturalization, either under this act or under the general naturalization statutes, as the intention of Congress that there*

should be no naturalizations for temporary purposes may be deduced from the Act of March 2, 1907, ch. 2534, sec. 2 (in title CITIZENSHIP, 1909 Supp. Fed. Stat. Ann. 68, and 2 Fed. Stat. Ann. (2d ed.) 122), which provides for a forfeiture of naturalization if the naturalized citizen shall have resided for two years in the foreign state from which he came. In re Naturalization of Aliens, etc., (E. D. Mo. 1918) 250 Fed. 316.

“ Eighth. [**Seamen.**] That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any Act of Congress notwithstanding;

but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, That nothing contained in this Act shall be taken or construed to repeal or modify any portion of the Act approved March fourth, nineteen hundred and fifteen. (Thirty-eight Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an Act to promote the welfare of American seamen. [— *Stat. L.* —.]

For Act of March 4, 1915, ch. 153, see 1916 Supp. Fed. Stat. Ann. 226; 9 Fed. Stat. Ann. (2d ed.) 126.

“ Ninth. [Promoting instruction in citizenship.] That for the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the Bureau of Naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto. [— *Stat. L.* —.]

“ Tenth. [Declaration of intention when dispensed with — misinformation regarding citizenship status.] That any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law and who during or prior to that time, because of misinformation regarding his citizenship status erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law. [— *Stat. L.* —.]

“ Eleventh. [Alien enemies — R. S. secs. 2171, 3679 repealed.] No alien who is a native, citizen, subject, or denizen of any country, State, or

sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner or Deputy Commissioner of Naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require: *Provided, however*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: *Provided further*, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of \$400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes shall not be applicable in any way to this appropriation.
[— Stat. L. —]

For R. S. sec. 2171 here repealed, see 5 Fed. Stat. Ann. 208; 6 Fed. Stat. Ann. (2d ed.) 947.

For R. S. sec. 3679, here repealed, see 10 Fed. Stat. Ann. 84; 3 Fed. Stat. Ann. (2d ed.) 138.

“Twelfth. [Resumption of citizenship by persons in military service of allies.] That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the Act (Public

fifty-five, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen), is hereby repealed. [— *Stat. L.* —.]

The Act of Oct. 5, 1917, ch. —, — *Stat. L.* —, repealed by the text, was as follows:

"That any person formerly an American citizen, who may be deemed to have expatriated himself under the provisions of the first paragraph of section two of the Act approved March second, nineteen hundred and seven, entitled 'An Act in reference to the expatriation of citizens and their protection abroad,' by taking, since August first, nineteen hundred and fourteen, an oath of allegiance to any foreign State engaged in war with a country with which the United States is at war, and who took such oath in order to be enabled to enlist in the armed forces of such foreign State, and who actually enlisted in such armed forces, and who has been or may be duly and honorably discharged from such armed forces, may, upon complying with the provisions of this Act, reassume and acquire the character and privileges of a citizen of the United States: *Provided, however,* That no obligation in the way of pensions or other grants because of service in the army or navy of any other country, or disabilities incident thereto, shall accrue to the United States.

"Any such person who desires so to reacquire and reassume the character and privileges of a citizen of the United States shall, if abroad, present himself before a consular officer of the United States, or, if in the United States, before any court authorized by law to confer American citizenship upon aliens, shall offer satisfactory evidence that he comes within the terms of this Act, and shall take an oath declaring his allegiance to the United States and agreeing to support the Constitution thereof and abjuring and disclaiming allegiance to such foreign State and to every foreign prince, potentate, State, or sovereignty. The consular officer or court officer having jurisdiction shall thereupon issue in triplicate a certificate of American citizenship, giving one copy to the applicant, retaining one copy for his files, and forwarding one copy to the Secretary of Labor. Thereafter such person shall in all respects be deemed to have acquired the character and privileges of a citizen of the United States. The Secretary of State and the Secretary of Labor shall jointly issue regulations for the proper administration of this Act."

"Thirteenth. [Continuous residence within United States when unnecessary.] That any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law." [— *Stat. L.* —.]

SEC. 2. [Repeals and amendments — aliens discharged from military or naval service — seamen — aliens believing themselves to be citizens — aliens of African nativity and descent.] That the following provisions of law be, and they are hereby, repealed: Sections twenty-one hundred and sixty-six and twenty-one hundred and seventy-four of the Revised Statutes of the United States of America and so much of an Act approved July

twenty-sixth, eighteen hundred and ninety-four, entitled "An Act making provisions for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," being chapter one hundred and sixty-five of the laws of eighteen hundred and ninety-four (Twenty-eighth Statutes at Large, page one hundred and twenty-four), reading as follows: "Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps;" and so much of an Act approved June thirtieth, nineteen hundred and fourteen, entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes," being chapter one hundred and thirty of the laws of nineteen hundred and fourteen (Thirty-eighth Statutes at Large, part one, page three hundred and ninety-two), reading as follows: "Any alien of the age of twenty-one years and upwards who may under existing law become a citizen of the United States, who has served or may hereafter serve for one enlistment of not less than four years in the United States Navy or Marine Corps, and who has received therefrom an honorable discharge or an ordinary discharge, with recommendation for reenlistment, or who has completed four years in the Revenue-Cutter Service and received therefrom an honorable discharge or an ordinary discharge with recommendation for reenlistment, or who has completed four years of honorable service in the naval auxiliary service, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such, and without proof of residence on shore, and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof from naval or revenue-cutter sources of such service: *Provided*, That an honorable discharge from the Navy, Marine Corps, Revenue-Cutter Service, or the Naval Auxiliary Service, or an ordinary discharge with recommendation for reenlistment, shall be accepted as proof of good moral character: *Provided further*, That any court which now has or may hereafter be given jurisdiction to naturalize aliens as citizens of the United States may immediately naturalize any alien applying under and furnishing the proof prescribed by the foregoing provisions"; and so much of section three of an Act approved June twenty-fifth, nineteen hundred and ten (Thirty-fourth Statutes at Large, part one, page six hundred and thirty), reading as follows: "That paragraph two of section four of an Act entitled 'An Act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States,' approved June twenty-ninth, nineteen hundred and six, be amended by adding, after the proviso in paragraph two of section four of said Act, the following: *Provided further*, That any person belonging to the class of persons authorized and qualified under

existing law to become a citizen of the United States, who has resided constantly in the United States during a period of five years next preceeding May first, nineteen hundred and ten, who, because of misinformation in regard to his citizenship or the requirements of the law governing the naturalization of citizens has labored and acted under the impression that he was or could become a citizen of the United States and has in good faith exercised the rights or duties of a citizen or intended citizen of the United States because of such wrongful information and belief may, upon making a showing of such facts satisfactory to a court having jurisdiction to issue papers of naturalization to an alien, and the court in its judgment believes that such person has been for a period of more than five years entitled upon proper proceedings to be naturalized as a citizen of the United States, receive from the said court, a final certificate of naturalization, and said court may issue such certificate without requiring proof of former declaration by or on part of such person of their intention to become a citizen of the United States, but such applicant for naturalization shall comply in all other respects with the law relative to the issuance of final papers of naturalization to aliens."

That all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed; but nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined: *Provided*, That for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this Act the statutes and laws hereby repealed shall remain in full force and effect: *Provided further*, That as to all aliens who, prior to January first, nineteen hundred, served in the Armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the Revised Statutes of the United States shall be and remain in full force and effect, anything in this Act to the contrary notwithstanding. [— *Stat. L. —*.]

For R. S. secs. 2166 and 2174, repealed by this section, see 5 Fed. Stat. Ann. 205, 210; 6 Fed. Stat. Ann. (2d ed.) 941, 950.

For Act of July 26, 1894, see 5 Fed. Stat. Ann. 206; 6 Fed. Stat. Ann. (2d ed.) 1004.

For Act of June 30, 1914, see 1916 Supp. Fed. Stat. Ann. 167; 6 Fed. Stat. Ann. (2d ed.) 1004.

For Act of June 25, 1910, § 3, see 1912 Supp. Fed. Stat. Ann. 277; 6 Fed. Stat. Ann. (2d ed.) 959.

For R. S. 2169, mentioned in the text, see 5 Fed. Stat. Ann. 207; 6 Fed. Stat. Ann. (2d ed.) 944.

SEC. 3. [Certificate of naturalization — validation — "District" amended.] That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this Act further validated or legalized.

The word "District" in sections four, ten, and twenty-seven of the Act which this Act amends is hereby amended to read "the District of Columbia." [—*Stat. L.* —.]

For Act of June 29, 1906, see 1909 Supp. Fed. Stat. Ann. 365; 6 Fed. Stat. Ann. (2d ed.) 952.

NAVAL ACADEMY

Act of Aug. 29, 1916, ch. 417, 496.

Sec. 1. Midshipmen — Increase of Number — Appointment of Enlisted Men, 496.

Admission of Filipinos, 496.

Professors, etc. — Appointment — Compensation — Report to Congress, 497.

Board of Visitors — Appointment — Number — Pay, 497.

Act of March 4, 1917, ch. 180, 497.

Midshipmen — Increase of Number — Appointment of Enlisted Men, 497.

Act of Dec. 20, 1917, ch. —, 498.

Sec. 1. Midshipmen — Increase of Number, 498.

2. Repeal, 498.

Act of April 2, 1918, ch. —, 498.

Course of Instruction — Reduction, 498.

Act of May 14, 1918, ch. —, 499.

Age Limits of Candidates, 499.

[SEC. 1.] [Midshipmen — increase of number — appointment of enlisted men.] * * * Hereafter in addition to the appointment of midshipmen to the United States Naval Academy, as now prescribed by law, the President is hereby allowed fifteen appointments annually instead of ten as now prescribed by law, and the Secretary of the Navy is allowed twenty-five appointments annually, instead of fifteen as now prescribed by law, the latter to be appointed from the enlisted men of the Navy who are citizens of the United States, and not more than twenty years of age on the date of entrance to the Naval Academy, and who shall have served not less than one year as enlisted men on the date of entrance: *Provided*, That such appointments shall be made in the order of merit from candidates who have in competition with each other passed the mental examination now or hereafter required by law for entrance to the Naval Academy, and who passed the physical examinations required before entrance under existing laws. [39 *Stat. L.* 576.]

The foregoing paragraph and the following three paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

The number of appointments allowed the Secretary of the Navy was increased by the first paragraph of the Act of March 4, 1917, ch. 180, *infra*, p. 497.

[Admission of Filipinos.] * * * That hereafter the Secretary of the Navy is authorized to permit not exceeding four Filipinos, to be designated, one for each class, by the Governor General of the Philippine Islands to receive instruction at the United States Naval Academy at Annapolis,

Maryland: *Provided*, That the Filipinos undergoing instruction, as herein authorized, shall receive the same pay, allowances, and emoluments, to be paid out of the same appropriations, and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as are authorized by law and regulation for midshipmen appointed from the United States, but the Filipino midshipmen herein authorized shall not be entitled to appointment to any commissioned office in the United States Navy by reason of their graduation from the Naval Academy. [39 Stat. L. 576.]

See the notes to the preceding paragraph of the text.

[Professors, etc.— appointment — compensation — report to Congress.]

* * * That the Secretary of the Navy is authorized to employ at the Naval Academy such number of professors and instructors, including one professor as librarian, as, in his opinion, may be necessary for the proper instruction of the midshipmen; and that professors and instructors so employed shall receive such compensation for their services as may be prescribed by the Secretary of the Navy: *Provided further*. That the total amount so paid shall not exceed \$175,000 annually: *And provided further*, That the Secretary of the Navy shall report to Congress each year the number of professors and instructors so employed and the amount of compensation prescribed for each. [39 Stat. L. 607.]

See the note to the first paragraph of this Act, *supra*, p. 496.

[Board of visitors — appointment — number — pay.] * * * From and after the passage of this Act there shall be appointed every year in the following manner, a Board of Visitors, to visit the academy, the date of the annual visit of the board aforesaid to be fixed by the Secretary of the Navy: Seven persons shall be appointed by the President and four Senators and five Members of the House of Representatives shall be designated as visitors by the Vice President or President pro tempore of the Senate and the Speaker of the House of Representatives, respectively, in the month of January of each year. The chairman of the Committee on Naval Affairs of the Senate and chairman of the Committee on Naval Affairs of the House of Representatives shall be ex officio members of said board.

Each member of said board shall receive while engaged upon duties as a member of the board not to exceed \$5 a day and actual expenses of travel by the shortest mail routes. [39 Stat. L. 608.]

See the note to the first paragraph of this Act, *supra*, p. 496.

[Midshipmen — increase of number — appointment of enlisted men.]

* * * Hereafter, in addition to the appointment of midshipmen to the United States Naval Academy, as now prescribed by law, the Secretary of the Navy is allowed one hundred appointments annually, instead of twenty-five as now prescribed by law, to be appointed from the enlisted men of the Navy who are citizens of the United States, and not more than

twenty years of age on the date of entrance to the Naval Academy, and who shall have served not less than one year as enlisted men on the date of entrance: *Provided*, That such appointments shall be made in the order of merit from candidates who have, in competition with each other, passed the mental examination now or hereafter required by law for entrance to the Naval Academy, and who passed the physical examination before entrance under existing laws. [39 Stat. L. 1182.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

The number of appointments allowed the Secretary of the Navy was previously fixed at twenty-five by the Act of Aug. 29, 1916, ch. 417, § 1, *supra*, p. 496.

An Act To increase the number of midshipmen at the United States Naval Academy.

[Act of Dec. 20, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Midshipmen — increase of number.] That hereafter there shall be allowed at the United States Naval Academy five midshipmen for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for the District of Columbia, fifteen appointed each year at large, and one hundred appointed annually from enlisted men of the Navy, as now authorized by law. [— Stat. L. —.]

The number of appointments allowed the Secretary of the Navy was increased by the Act of Aug. 29, 1916, ch. 417, § 1, *supra*, p. 496, and the Act of March 4, 1917, ch. 180, given in the preceding paragraph of the text.

The number of midshipmen had previously been increased by the Act of Feb. 15, 1916, ch. 24, 39 Stat. L. 9, which was as follows:

[SEC. 1.] "That hereafter there shall be allowed at the United States Naval Academy three midshipmen for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for the District of Columbia, ten appointed each year at large, and fifteen appointed annually from enlisted men of the Navy as now authorized by law.

"SEC. 2. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

The number of enlisted men had also been previously increased by the Act of April 25, 1917, ch. —, — Stat. L. —, which was as follows: "That, in addition to the number of midshipmen now authorized by law, there shall be appointed during the period from the date of passage of this Act until September first, nineteen hundred and eighteen; one additional midshipman for each Senator, Representative, and Delegate in Congress. Nominations shall be made for these vacancies by the Senators, Representatives, and Delegates concerned by any regular or special examination that may be ordered before that date."

SEC. 2. [Repeal.] That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— Stat. L. —.]

An Act To authorize the President to reduce temporarily the course of instruction at the United States Naval Academy.

[Act of April 2, 1918, ch. —, — Stat. L. —.]

[Course of instruction — reduction.] That the President be, and he is hereby, authorized, until August first, nineteen hundred and twenty-one, to reduce, in his discretion, the course of instruction at the United States

Naval Academy from four to three years and to graduate classes which have completed such reduced courses of instruction. [— *Stat. L.* —.]

The course of instruction had previously been reduced by the Naval Appropriation Act of March 4, 1918, ch. 180, 39 Stat. L. 1182, which provided as follows: "The President, in his discretion, is authorized to reduce the course of instruction at the Naval Academy from four to three years for a period of two years from the date of the approval of this Act, and may during said two years graduate classes which have completed a three-year course."

An Act To fix the age limits for candidates for admission to the United States Naval Academy.

[*Act of May 14, 1918, ch. —, — Stat. L. —.*]

[**Age limits of candidates.**] That hereafter all candidates for admission to the Naval Academy must be not less than sixteen years of age nor more than twenty years of age on April first of the calendar year in which they enter the academy: *Provided*, That the foregoing shall not apply to candidates for midshipmen designated for entrance to the academy in nineteen hundred and eighteen. [— *Stat. L.* —.]

NAVY

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I. GENERAL PROVISIONS RELATING TO THE NAVY

[SEC. 1.] [Bureau of Construction and Repair — services of draftsmen, etc.— compensation — report.] * * * The services of draftsmen and such other technical services as the Secretary of the Navy may deem necessary may be employed only in the Bureau of Construction and Repair and at rates of compensation not exceeding those paid hereunder prior to January first, nineteen hundred and fifteen, to carry into effect the various appropriations for "Increase of the Navy" and "Construction and Repair," to be paid from the appropriation "Construction and Repair": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each shall be made to Congress each year in the annual estimates. [39 Stat. L. 97.]

This and the following paragraph of the text are from the Legislative, Executive, and Judicial Appropriation Act of May 10, 1916, ch. 117.

[Bureau of Ordnance — services of clerks, draftsmen, etc.— compensation — report.] * * * The services of clerks, draftsmen, and such other technical services as the Secretary of the Navy may deem necessary may be employed only in the Bureau of Ordnance, and at rates of compensation not exceeding those paid hereunder prior to January first, nineteen hundred and fifteen, to carry into effect the various appropriations for "Increase of the Navy" and "Ordnance and Ordnance Stores," to be paid from the appropriation "Ordnance and Ordnance Stores": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each, shall be made to Congress each year in the annual estimates. [39 Stat. L. 97.]

See the note to the preceding paragraph of the text.

An Act To authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Republic of Haiti, and for other purposes.

[Act of June 12, 1916, ch. 140, 39 Stat. L. 223.]

[SEC. 1.] [Detail of officers and enlisted men to assist Republic of Haiti.] That the President of the United States be, and he is hereby,

authorized, in his discretion, to detail to assist the Republic of Haiti such officers and enlisted men of the United States Navy and the United States Marine Corps as may be mutually agreed upon by him and the President of the Republic of Haiti: *Provided*, That the officers and enlisted men so detailed be, and they are hereby, authorized to accept from the Government of Haiti the said employment with compensation and emoluments from the said Government of Haiti, subject to the approval of the President of the United States. [39 Stat. L. 223.]

SEC. 2. [Power of substitution.] That to insure the continuance of this work during such time as may be desirable, the President may have the power of substitution in the case of the termination of the detail of an officer or enlisted man for any cause: *Provided*, That during the continuance of such details the officers and enlisted men shall continue to receive the pay and allowances of their ranks or ratings in the Navy or Marine Corps. [39 Stat. L. 224.]

Section 3 of this Act, relating to increase of the Marine Corps, is given *infra*, p. 562.

SEC. 4. [Navy increase.] That the following increase in the United States Navy be, and the same is hereby, authorized: One surgeon, two passed assistant surgeons, five hospital stewards, and ten hospital apprentices, first class. [39 Stat. L. 224.]

SEC. 5. [Officers and enlisted men detailed to Haiti — credit for service rendered.] That officers and enlisted men of the Navy and Marine Corps detailed for duty to assist the Republic of Haiti shall be entitled to the same credit for such service, for longevity, retirement, foreign service, pay, and for all other purposes, that they would receive if they were serving with the Navy or with the Marine Corps. [39 Stat. L. 224.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of August 29, 1916, ch. 417, 39 Stat. L. 556.]

[SEC. 1.] [Civilian employees abroad — leave of absence with pay.]
 * * * That hereafter any civilian employee of the Navy Department who is a citizen of the United States and employed at any station outside the continental limits of the United States may, in the discretion of the Secretary of the Navy, after at least two years' continuous, faithful, and satisfactory service abroad, and subject to the interests of the public service, be granted accrued leave of absence, with pay, for each year of service, and if an employee should elect to postpone the taking of any or all of the leave to which he may be entitled in pursuance hereof such leave may be allowed to accumulate for a period of not exceeding four years, the rate of pay for accrued leave to be the rate obtaining at the time the leave is granted. [39 Stat. L. 557.]

[Insane interned persons and prisoners of war — admission to Government hospital.] * * * Hereafter interned persons and prisoners of war, under the jurisdiction of the Navy Department, who are or may become insane, shall be entitled to admission for treatment to the Government Hospital for the Insane. [39 Stat. L. 558.]

[Chief of naval operations — rank — pay.] * * * Hereafter the Chief of Naval Operations, while so serving as such Chief of Naval Operations, shall have the rank and title of admiral, to take rank next after The Admiral of the Navy, and shall, while so serving as Chief of Naval Operations, receive the pay of \$10,000 per annum and no allowances. All orders issued by the Chief of Naval Operations in performing the duties assigned him shall be performed under the authority of the Secretary of the Navy, and his orders shall be considered as emanating from the Secretary, and shall have full force and effect as such. To assist the Chief of Naval Operations in performing the duties of his office there shall be assigned for this exclusive duty not less than fifteen officers of and above the rank of lieutenant commander of the Navy or major of the Marine Corps: *Provided*, That if an officer of the grade of captain be appointed Chief of Naval Operations he shall have the rank and title of admiral, as above provided, while holding that position: *Provided further*, That should an officer, while serving as Chief of Naval Operations, be retired from active service he shall be retired with the lineal rank and the retired pay to which he would be entitled had he not been serving as Chief of Naval Operations. [39 Stat. L. 558.]

[Detail of certain officers.] * * * Hereafter an officer of the Corps of Civil Engineers may be detailed as assistant to the Chief of the Bureau of Yards and Docks and an officer of the Corps of Naval Constructors as assistant to the Chief of Bureau of Construction and Repair; and, in case of death, resignation, absence, or sickness of the chief of Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such chief until his successor is appointed or such absence or sickness shall cease; and hereafter an officer of the line of the Navy or Marine Corps may be detailed as assistant to the Judge Advocate General of the Navy, who shall, under similar conditions, perform the duties of the Judge Advocate General. [39 Stat. L. 558.]

For R. S. sec. 179, mentioned in the text, see 3 Fed. Stat. Ann. 62; 3 Fed. Stat. Ann. (2d ed.) 256.

[Drafting, technical and inspection force — expenditure for pay.] * * * Hereafter such amount may be expended annually for pay of drafting, technical, and inspection force from the several lump sum appropriations in which specific authority for such expenditure is given, as the Secretary of the Navy may deem necessary within the limitation of appropriation provided for such service in said lump sum appropriations at such rates of compensation as the Secretary of the Navy may prescribe; and the Secretary of the Navy shall each year, in the annual estimates, report

to Congress the number of persons so employed, their duties, and the amount paid to each. [39 Stat. L. 558.]

Following this paragraph there appeared in this Act a paragraph as follows: "That any person who may hereafter enlist in the Navy for the first time shall, in time of peace, if he so elects, receive discharge therefrom without cost to himself during the month of June or December, respectively, following the completion of one year's service at sea. An honorable discharge may be granted under this provision; but when so granted shall not entitle the holder, in case of reenlistment, to the benefits of an honorable discharge granted upon completion of an enlistment: *And provided further*, That, at the time, he is not under charges, or undergoing punishment, or in debt to the Government." [39 Stat. L. 560.]

This was repealed by the Act of March 4, 1917, ch. 180, 39 Stat. L. 1171, in the following terms: "So much of the Act entitled 'An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and seventeen,' and approved August twenty-ninth, nineteen hundred and sixteen, which reads as follows, is hereby repealed:

"*Provided*, That any person who may hereafter enlist in the Navy for the first time shall, in time of peace, if he so elects, receive discharge therefrom without cost to himself during the month of June or December, respectively, following the completion of one year's service at sea. An honorable discharge may be granted under this provision; but when so granted shall not entitle the holder, in case of reenlistment, to the benefits of an honorable discharge granted upon completion of an enlistment: *And provided further*, That, at the time, he is not under charges, or undergoing punishment, or in debt to the Government."

"*Provided*, That the provisions of this section shall not apply to enlistments under the operation of the Act hereby repealed."

Following this paragraph there also appeared in this Act a paragraph as follows: "That the President is authorized in his discretion to utilize the services of postmasters of the second, third, and fourth classes in procuring the enlistment of recruits for the Navy and the Marine Corps, and for each recruit accepted for enlistment in the Navy or the Marine Corps, the postmaster procuring his enlistment shall receive the sum of \$5." [39 Stat. L. 560.]

This was repealed by the Postal Service Appropriation Act of July 2, 1918, ch. —, § 1, — Stat. L. —. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

[Motor-propelled vehicles — exchange.] * * * That hereafter worn-out motor-propelled vehicles for the Naval Establishment may be exchanged as a part of the purchase price of new ones. [39 Stat. L. 565.]

[Funeral expenses, etc., of officers and enlisted men — six months' gratuity pay.] * * * That no deduction shall hereafter be made from the six months' gratuity pay allowed under the naval act of August twenty-second, nineteen hundred and twelve, on account of expenses for funeral, interment, or for expenses of preparation and transportation of the remains. [39 Stat. L. 572.]

For the provisions of the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290. Said Act amended the Act of May 13, 1908, ch. 166, see 6 Fed. Stat. Ann. (2d ed.) 1210.

[Hospital corps — authorized strength — grades and ratings — transfers — pharmacists — duties of corps — when subject to rules and articles of war of army — Act repealed.] Hereafter the authorized strength of the Hospital Corps of the Navy shall equal three and one-half per centum of the authorized enlisted strength of the Navy and Marine Corps, and shall be in addition thereto, and as soon as the necessary transfers or appointments may be effected the Hospital Corps of the United States Navy shall consist of the following grades and ratings: Chief pharmacists, pharmacists, and enlisted men classified as chief pharmacists' mates; pharmacists' mates, first class; pharmacists' mates, second class; pharmacists'

mates, third class; hospital apprentices, first class; and hospital apprentices, second class; such classifications in enlisted ratings to correspond respectively to the enlisted ratings, seamen branch, of chief petty officers; petty officers, first class; petty officers, second class; petty officers, third class; seamen, first class; and seamen, second class: *Provided*, That enlisted men of other ratings in the Navy and in the Marine Corps shall be eligible for transfer to the Hospital Corps, and men of that corps to other ratings in the Navy and the Marine Corps.

The President may hereafter, from time to time, appoint as many pharmacists as may be deemed necessary, from the rating of chief pharmacist's mate, subject to such moral, physical, and professional examinations and requirements as to length of service as the Secretary of the Navy may prescribe: *Provided*, That the pharmacists now in the Hospital Corps of the United States Navy or hereafter appointed therein in accordance with the provisions of this Act shall have the same rank, pay, and allowances as are now or may hereafter be allowed other warrant officers.

Pharmacists shall, after six years from the date of warrant, be commissioned chief pharmacists after passing satisfactorily such examinations as the Secretary of the Navy may prescribe, and shall, when so commissioned, have the same rank, pay, and allowances as now or may hereafter be allowed other commissioned warrant officers: *Provided*, That the pharmacists at present in the service who have served or may thereafter serve six or more years in that grade shall be eligible for promotion to the grade of chief pharmacist upon satisfactorily passing the examinations provided for in this Act.

The Secretary of the Navy is hereby empowered to limit and fix the numbers in the various ratings.

Section three of an Act entitled "An Act to organize a Hospital Corps of the Navy of the United States; to define its duties and regulate its pay," approved June seventeenth, eighteen hundred and ninety-eight, be, and the same is hereby, repealed, and the pay, allowances, and emoluments of the enlisted men of the Hospital Corps shall be the same as are now, or may hereafter be, allowed for respective corresponding ratings, except the rating of turret captain of the first class in the seaman branch of the Navy: *Provided*, That the pay of the rating of the chief pharmacist's mate shall be the same as that now allowed for the existing rating of hospital steward.

Hospital and ambulance service with such commands and at such places as may be prescribed by the Secretary of the Navy, shall be performed by members of said corps, and the corps shall be a constituent part of the Medical Department of the Navy; and the enlisted men thereof shall be a part of the enlisted force provided by law for the Navy.

Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of section sixteen hundred and twenty-one of the Revised Statutes, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving. [39 Stat. L. 572.]

For the Act of June 17, 1898, ch. 463, § 3, repealed by the text, see 5 Fed. Stat. Ann. 256; 6 Fed. Stat. Ann. (2d ed.) 1091 note.

For R. S. sec. 1621, mentioned in the text, see 5 Fed. Stat. Ann. 350; 6 Fed. Stat. Ann. (2d ed.) 1221.

[Naval Dental Corps — dental surgeons — appointment — rank — qualifications — pay and allowances.] That the President of the United States is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental officers in the Navy at the rate of one for each thousand of the total authorized number of officers and enlisted men of the Navy and Marine Corps, in the grade of assistant dental surgeon, passed assistant dental surgeon and dental surgeon, who shall constitute the Naval Dental Corps, and shall be a part of the Medical Department of the Navy. Original appointments to the Naval Dental Corps shall be made in the grade of assistant dental surgeon with the rank of lieutenant (junior grade), and all dental officers now in the Dental Corps appointed under the provisions of the Act of Congress approved August twenty-second, nineteen hundred and twelve (Statutes at Large, volume thirty-seven, page three hundred and forty-five), or under the provisions of the Act of Congress approved August twenty-ninth, nineteen hundred and sixteen (Statutes at Large, volume thirty-nine, page five hundred and seventy-three), or who may hereafter be appointed, shall take rank and precedence with officers of the Naval Medical Corps of the same rank according to the dates of their respective commissions or original appointments, and all such dental officers shall be eligible for advancement in grade and rank in the same manner and under the same conditions as officers of the Naval Medical Corps with or next after whom they take precedence, and shall receive the same pay and allowances as officers of corresponding rank and length of service in the Naval Medical Corps up to and including the rank of lieutenant commander: *Provided*, That dental surgeons shall be eligible for advancement in pay and allowances, but not in rank, to and including the pay and allowances of commander and captain, subject to such examinations as the Secretary of the Navy may prescribe, except that the number of dental surgeons with the pay and allowances of captain shall not exceed four and one-half per centum and the number of dental surgeons with the pay and allowances of commander shall not exceed eight per centum of the total authorized number of dental officers: *Provided further*, That dental surgeons shall be eligible for advancement to the pay and allowances of commander and captain when their total active service as dental officers in the Navy is such that if rendered as officers of the Naval Medical Corps, it would place them in the list of medical officers with the pay and allowances of commander or captain, as the case may be: *And provided further*, That dental officers who shall have gained or lost numbers on the Navy list shall be considered to have gained or lost service accordingly; and the time served by dental officers on active duty as acting assistant dental surgeons and assistant dental surgeons under provisions of law existing prior to the passage of this Act shall be reckoned in computing the increased service pay and service for precedence and promotion of dental officers herein authorized or heretofore appointed.

All appointments authorized by this Act shall be citizens of the United States between twenty-one and thirty-two years of age, and shall be graduates of standard medical or dental colleges and trained in the several branches of dentistry, and shall, before appointment, have successfully

passed mental, moral, physical, and professional examinations before medical and professional examining boards appointed by the Secretary of the Navy, and have been recommended for appointment by such boards: *Provided*, That hereafter no person shall be appointed as assistant dental surgeon in the Navy who is not a graduate of a standard medical or dental college.

Officers of the Naval Dental Corps shall become eligible for retirement in the same manner and under the same conditions as now prescribed by law for officers of the Naval Medical Corps, except that section fourteen hundred and forty-five of the Revised Statutes of the United States shall not be applicable to dental officers, and they shall not be entitled to rank above lieutenant commander on the retired list, or to retired pay above that of captain.

All dental officers now serving under probationary appointments shall become immediately eligible for permanent appointment under the provisions of this Act, subject to the examinations prescribed by the Secretary of the Navy for original appointment as dental officers, and may be appointed assistant dental surgeon with the rank of lieutenant (junior grade) to rank from the date of their probationary appointments: *Provided*, That the senior dental officer now at the United States Naval Academy shall not be displaced by the provisions of this Act, and he shall hereafter have the grade of dental surgeon and the rank, pay, and allowances of lieutenant commander, and he shall not be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in the line of duty: *Provided further*, That no dental officer in the Navy who on original appointment as dental officer was over forty years of age shall be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in line of duty.

All Acts or parts of Acts inconsistent with the provisions of this Act relating to the Dental Corps of the Navy are hereby repealed: *Provided*, That nothing herein contained shall be construed to legislate out of the service any officer now in the Medical Department of the Navy or to reduce the rank, pay, or allowances now authorized by law for any officer of the Navy. [39 Stat. L. 573, as amended by — Stat. L. —.]

These provisions were amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted they were as follows:

"That the President of the United States is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental surgeons in the Navy at the rate of one for each one thousand of the authorized enlisted strength of the Navy and Marine Corps, who shall constitute the Naval Dental Corps, and shall be a part of the Medical Department of the Navy. Original appointments to the Naval Dental Corps shall be probationary for a period of two years and may be revoked at any time during the probationary period by the President: *Provided*, That the rank of such officers of the same date of appointment among themselves at the end of said probationary period shall be determined by the recommendations of an examining board appointed by the Secretary of the Navy, which board shall conduct a competitive examination, based upon both service record and professional attainments, in accordance with such regulations as may be prescribed by the Secretary of the Navy, and the rank of such officers so determined shall be as of date of original appointment with reference to other appointments to the naval service: *Provided further*, That all appointees to the grade of dental surgeon shall be citizens of the United States between twenty-four and thirty years of age, and shall be graduates of standard medical or dental colleges and trained in the several branches of dentistry, and who shall, before appointment, have successfully passed moral, physical, and professional examinations before medical and professional examining boards appointed

by the Secretary of the Navy, and have been recommended for appointment by such boards.

"Dental surgeons shall have the rank, pay, and allowances of lieutenants (junior grade) until they shall have completed five years' service. Dental surgeons of more than five but less than twenty years' service shall, subject to such examinations as the Secretary of the Navy may prescribe, have the rank, pay, and allowances of lieutenant. Dental surgeons of more than twenty years' service shall, subject to such examinations as the Secretary of the Navy may prescribe, have the rank, pay, and allowances of lieutenant commander: *Provided*, That the total number of dental surgeons with the rank, pay, and allowances of lieutenant commander shall not at any time exceed ten.

"All officers now in the Dental Corps (including the officers appointed for temporary service) appointed under the provisions of the Act of August twenty-second, nineteen hundred and twelve, entitled 'An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes,' and all officers now in active service appointed under the provisions of the Act of March fourth, nineteen hundred and thirteen, who were eligible for appointment to the Dental Corps under the provisions of said Act, shall be appointed dental surgeons in the Dental Corps without further examination and without regard to the age qualifications herein prescribed: *Provided*, That the officers so appointed shall not be subject to the provisions herein prescribed for probationary service for a period of two years: *Provided further*, That such officers shall, after appointment as herein prescribed, rank from date of commission and take seniority among themselves in the order of their original appointment by the Secretary of the Navy as shown on the Navy list on the date of approval of this Act: *And provided further*, That no dental surgeon appointed in accordance with the provisions of this Act who on original appointment to the Dental Corps was over forty years of age shall be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in the line of duty.

"Dental surgeons who shall have lost numbers on the Navy list by sentence of court-martial or by failure upon examination for promotion shall be considered to have lost service accordingly for purposes of advancement in rank with increased pay and allowances."

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 294; 6 Fed. Stat. Ann. (2d ed.) 1101.

For R. S. sec. 1445, see 5 Fed. Stat. Ann. 281; 6 Fed. Stat. Ann. (2d ed.) 1118.

[Strength of navy — enlisted men.] * * * pay of petty officers, seamen, landsmen, and apprentice seamen, including men in the engineers force and men detailed for duty with the Fish Commission, sixty-eight thousand seven hundred men, and the President is hereafter authorized, whenever in his judgment a sufficient national emergency exists, to increase the authorized enlisted strength of the Navy to eighty-seven thousand men; * * * hereafter the number of enlisted men of the Navy shall be exclusive of those sentenced by court-martial to discharge; and as many machinists as the President may from time to time deem necessary to appoint; and six thousand apprentice seamen under training at training stations, and on board training ships, at the pay prescribed by law, * * * *Provided*, That the enlisted strength of the Navy authorized in this Act shall be deemed to include all enlistments heretofore made during this calendar year which may have been in excess of the number authorized by law at the time. [39 Stat. L. 575.]

[Ratings of certain enlisted men — change.] * * * That the designation of the rating of coal passer be changed to fireman, third class, and that of ordinary seaman to seaman, second class, without change of pay; and that the Bureau of Navigation be authorized under rules established for the advancement of other enlisted men, to advance printers to the ratings of printer, first class, and chief printer, which ratings are hereby authorized with same pay and increases allowed to yeomen, first class, and chief yeomen, respectively: *And provided further*, That the rating of store-

keeper is hereby established in the artificer branch with the following rates of pay per month: Chief petty officer, \$50; petty officer, first class, \$40; petty officer, second class, \$35; petty officer, third class, \$30, subject to such increases of pay and allowances as are or may hereafter be authorized by law for the enlisted men of the Navy. [39 Stat. L. 575.]

[Commissioned personnel — number of officers — distribution — pay and allowances — promotions — board of naval officers — creation — duties — retirement of officers.] * * * Hereafter the total number of commissioned officers of the active list of the line of the Navy, exclusive of commissioned warrant officers, shall be four per centum of the total authorized enlisted strength of the active list, exclusive of the Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps: *Provided*, That the total number of commissioned line officers on the active list at any one time, exclusive of commissioned warrant officers, shall be distributed in the proportion of one of the grade of rear admiral to four in the grade of captain, to seven in the grade of commander, to fourteen in the grade of lieutenant commander, to thirty-two and one-half in the grade of lieutenant, to forty-one and one-half in the grades of lieutenant (junior grade) and ensign, inclusive: *Provided further*, That lieutenants (junior grade) shall have had not less than three years' service in that grade before being eligible for promotion to the grade of lieutenant.

The total authorized number of commissioned officers of the active list of the following staff corps, exclusive of commissioned warrant officers, shall be based on percentages of the total number of commissioned officers of the active list of the line of the Navy as follows:

Pay Corps, twelve per centum; Construction Corps, five per centum; Corps of Civil Engineers, two per centum; and that the total authorized number of commissioned officers of the Medical Corps shall be sixty-five one hundredths of one per centum of the total authorized number of the officers and enlisted men of the Navy and Marine Corps, including midshipmen, Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps. Officers of the lower grades of the Medical Corps, Pay Corps, Construction Corps, and Corps of Civil Engineers shall be advanced in rank up to and including the rank of lieutenant commander with the officers of the line with whom or next after whom they take precedence under existing law: *Provided*, That all assistant surgeons shall from date of their original appointment take rank and precedence with lieutenants (junior grade): *Provided further*, That to determine the authorized number of officers in the various grades and ranks of the line and of the staff corps as herein provided, computations shall be made by the Secretary of the Navy semi-annually, as of July first and January first of each year, and the resulting numbers in the various grades and ranks, as so computed, shall be held and considered for all purposes as the authorized number of officers in such various grades and ranks and shall not be varied between such dates.

The total number of commissioned officers of the active list of the following mentioned staff corps at any one time, exclusive of commissioned

warrant officers, shall be distributed in the various grades of the respective corps as follows:

MEDICAL CORPS: One-half medical directors with the rank of rear admiral to four medical directors with the rank of captain, to eight medical inspectors with rank of commander, to eighty-seven and one-half in the grades below medical inspector: *Provided*, That hereafter appointees to the grade of assistant surgeon shall be between the ages of twenty-one and thirty-two at the time of appointment.

PAY CORPS: One-half pay directors with the rank of rear admiral to four pay directors with the rank of captain, to eight pay inspectors with the rank of commander, to eighty-seven and one-half in the grades below pay inspector.

CONSTRUCTION CORPS: One-half naval constructors with the rank of rear admiral to eight and one-half naval constructors with the rank of captain, to fourteen naval constructors with the rank of commander, to seventy-seven naval constructors and assistant naval constructors with rank below commander: *Provided*, That vacancies in the Construction Corps shall be filled in the manner now prescribed by law, at such annual rate as the Secretary of the Navy may prescribe: *Provided further*, That hereafter ensigns of not less than one year's service as such shall be eligible for transfer to the Construction Corps.

CORPS OF CIVIL ENGINEERS: One-half civil engineers with the rank of rear admiral to five and one-half civil engineers with the rank of captain, to fourteen civil engineers with the rank of commander, to eighty civil engineers and assistant civil engineers with the rank below commander.

Hereafter no further appointments shall be made to the Corps of Professors of Mathematics, and that corps shall cease to exist upon the death, resignation, or dismissal of the officers now carried in that corps on the active and retired lists of the Navy.

When there is an odd number of officers in the grade or rank of rear admiral in the line or in each corps, the lower division thereof shall include the excess in number, except where there is but one.

Whenever a final fraction occurs in computing the authorized number of any corps, grade or rank in the naval service, the nearest whole number shall be regarded as the authorized number: *Provided*, That at least one officer shall be allowed in each grade or rank.

For the purpose of determining the authorized number of officers in any grade or rank of the line or of the staff corps, there shall be excluded from consideration those officers carried by law as additional numbers, including staff officers heretofore permanently commissioned with the rank of rear admiral, and nothing contained herein shall be held to reduce below that heretofore authorized by law the number of officers in any grade or rank in the staff corps.

Hereafter pay and allowances of officers in the upper half of the grade or rank of rear admiral, including the staff corps and including staff officers heretofore permanently commissioned with the rank of rear admiral, shall be that now allowed by law for the first nine rear admirals, and the pay and allowances of officers in the lower half of the grade or rank of rear admiral, including the staff corps, shall be that now allowed by law for the second nine rear admirals: *Provided*, That officers shall take rank in

each staff corps according to the dates of commission in the several grades, excepting in cases where they have gained or lost numbers.

Hereafter chief boatswains, chief gunners, chief machinists, chief carpenters, chief sail makers, chief pharmacists, and chief pay clerks, on the active list with creditable records, shall, after six years from date of commission, receive the pay and allowances that are now or may hereafter be allowed a lieutenant (junior grade), United States Navy: *Provided*, That chief boatswains, chief gunners, chief machinists, chief carpenters, chief sail makers, chief pharmacists, and chief pay clerks, on the active list with creditable records, shall, after twelve years from date of commission, receive the pay and allowances that are now or may hereafter be allowed a lieutenant, United States Navy.

Warrant officers shall receive the same allowances of heat and light as are now or may hereafter be allowed an ensign, United States Navy.

Warrant officers shall be allowed such leave of absence, with full pay, as is now or may hereafter be allowed other officers of the United States Navy.

Hereafter all promotions to the grades of commander, captain, and rear admiral of the line of the Navy, including the promotion of those captains, commanders, and lieutenant commanders who are, or may be, carried on the Navy list as additional to the numbers of such grades, shall be by selection only from the next lower respective grade upon the recommendation of a board of naval officers as herein provided.

The board shall consist of nine rear admirals on the active list of the line of the Navy not restricted by law to the performance of shore duty only, and shall be appointed by the Secretary of the Navy and convened during the month of December of each year and as soon after the first day of the month as practicable.

Each member of said board shall swear, or affirm, that he will, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him as herein provided.

The board shall be furnished by the Secretary of the Navy with the number of vacancies in the grades of rear admiral, captain, and commander to be filled during the following calendar year, including the vacancies existing at the time of the convening of the board and those that will occur by operation of law from the date of convening until the end of the next calendar year, and with the names of all officers who are eligible for consideration for selection as herein authorized, together with the record of each officer: *Provided*, That any officer eligible for consideration for selection shall have the right to forward through official channels at any time not later than ten days after the convening of said board a written communication inviting attention to any matter of record in the Navy Department concerning himself which he deems important in the consideration of his case: *Provided*, That such communication shall not contain any reflection upon the character, or motives of or criticism of any officer: *Provided further*, That no captains, commanders, or lieutenant commanders who shall have had less than four years' service in the grade in which he is serving on November the thirtieth of the year of the convening of the board shall be eligible for consideration by the board: *Provided further*, That the recommendation of the board in the case of officers of the former

Engineer Corps who are restricted by law to the performance of shore duty only and in that of officers who may hereafter be assigned to engineering duty only shall be based upon their comparative fitness for the duties prescribed for them by law. Upon promotion they shall be carried as additional numbers in grade.

The board shall recommend for promotion a number of officers in each grade equal to the number of vacancies to be filled in the next higher grade during the following calendar year: *Provided*, That no officer shall be recommended for promotion unless he shall have received the recommendation of not less than six members of said board.

The report of the board shall be in writing signed by all of the members and shall certify that the board has carefully considered the case of every officer eligible for consideration under the provisions of this law, and that in the opinion of at least six of the members, the officers therein recommended are the best fitted of all those under consideration to assume the duties of the next higher grade, except that the recommendation of the board in the case of officers of the former Engineer Corps who are restricted by law to the performance of shore duty only, and in that of officers who may hereafter be assigned to engineering duty only, shall be based upon their comparative fitness for the duties prescribed for them by law.

The report of the board shall be submitted to the President for approval or disapproval. In case any officer or officers recommended by the board are not acceptable to the President, the board shall be informed of the name of such officer or officers, and shall recommend a number of officers equal to the number of those found not acceptable to the President and if necessary shall be reconvened for this purpose. When the report of the board shall have been approved by the President, the officers recommended therein shall be deemed eligible for selection, and if promoted shall take rank with one another in accordance with their seniority in the grade from which promoted: *Provided*, That any officers so selected shall prior to promotion be subject in all respects to the examinations prescribed by law for officers promoted by seniority, and in case of failure to pass the required professional examination such officer shall thereafter be ineligible for selection and promotion. And should any such officer fail to pass the required physical examination he shall not be considered, in the event of retirement, entitled to the rank of the next higher grade.

On and after June thirtieth, nineteen hundred and twenty, no captain, commander, or lieutenant commander shall be promoted unless he has had not less than two years' actual sea service on seagoing ships in the grade in which serving or who is more than fifty-six, fifty, or forty-five years of age, respectively: *Provided*, That in exceptional cases where officers are specifically designated during war or national emergency declared by the President by the Secretary of the Navy as performing, or as having performed, such highly important duties on shore that their services can not be or could not have been spared from such assignment without serious prejudice to the successful prosecution of the war, the qualification of sea service in the cases of those officers so specifically designated shall not apply while the United States is at war, or during a national emergency declared by the President, or within two and one-half years subsequent to the ending of such war or national emergency: *Provided*, That the qualification

of sea service shall not apply to officers restricted to the performance of engineering duty only: *Provided further*, That captains, commanders, and lieutenant commanders who become ineligible for promotion on account of age shall be retired on a percentage of pay equal to two and one-half per centum of their shore-duty pay for each year of service: *Provided further*, That the total retired pay shall not exceed seventy-five per centum of the shore-duty pay they were entitled to receive while on the active list.

Except as herein otherwise provided, hereafter the age for retirement of all officers of the Navy shall be sixty-four years instead of sixty-two years as now prescribed by law.

Nothing contained in this Act shall be construed to reduce the rank, pay, or allowances of any officer of the Navy or Marine Corps as now provided by law. [39 Stat. L. 576, as amended by — Stat. L. —.]

The twenty-fourth paragraph of the text was amended by the Naval Appropriation Act of July 1, 1918, ch. —, by the insertion of a new proviso immediately after the clause that "On and after June thirtieth, nineteen hundred and twenty, no captain, commander, or lieutenant commander shall be promoted unless he has had not less than two years' actual sea service on sea-going ships in the grade in which serving, or who is more than fifty-six, fifty, or forty-five years of age, respectively," the proviso reading as given in the text.

As originally enacted, there was contained in the twenty-first paragraph of the text a proviso as follows: "*Provided further*, That the increase in the number of captains herein authorized shall be made at the rate of not more than ten captains in any one year." This was repealed by the Act of May 22, 1917, ch. —, § 14, — Stat. L. —.

[Officers for engineering duty — assignments — number — appointments — eligibility — advancements.] * * * Officers of the line of the Navy not below the grade of lieutenant may, upon application, and with the approval of the Secretary of the Navy, be assigned to engineering duty only, and that when so assigned and until they reach the grade of commander, they shall perform duty as prescribed in section four of the Personnel Act approved March third, eighteen hundred and ninety-nine, and thereafter shore duty only as now prescribed for officers transferred to the line from the former engineer corps, except that commanders may be assigned to duty as fleet and squadron engineers: *Provided*, That when so assigned they shall retain their place with respect to other line officers in the grades they now or may hereafter occupy, and also the right to succession to command on shore in accordance with their seniority, and shall be promoted as vacancies occur subject to physical examination and to such examination in engineering as the Secretary of the Navy may prescribe: *Provided further*, That the number of officers so assigned in any one year shall be in accordance with the requirements of the service as determined by the Secretary of the Navy: *And provided further*, That the Secretary of the Navy is hereby authorized to appoint annually in the line of the Navy for a period of ten years following the passage of this Act, in the order of merit determined by such competitive examination as he may prescribe, thirty acting ensigns for the performance of engineering duties only. Persons so appointed must have received a degree of mechanical or electrical engineer from a college or university of high standing or be graduates of technical schools approved by the Secretary of the Navy, must have been found physically qualified by a board of medical officers of the Navy for the performance of the duties required, and must

at the time of appointment be not less than twenty nor more than twenty-six years of age. Such appointments shall be for a probationary period of three years, and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns shall, upon the completion of the probationary period of three years, of which two years shall have been spent on board cruising vessels and one year pursuing a course of instruction at the Naval Academy prescribed by the Secretary of the Navy, be commissioned in the grade of lieutenant of the junior grade after satisfactorily passing such examination as may be prescribed by the Secretary of the Navy, and having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy.

Such officers shall thereafter be required to perform engineering duties only, and shall be eligible for advancement to the higher grades in the manner herein provided for line officers assigned to engineering duty only. [39 Stat. L. 580.]

For the Navy Personnel Act of March 3, 1899, ch. 413, § 4, mentioned in the text, see 5 Fed. Stat. Ann. 249; 6 Fed. Stat. Ann. (2d ed.) 1093.

[Officers and enlisted men — absence from duty — intemperate use of drugs or alcohol — pay.] * * * Hereafter no officer or enlisted man in the Navy or Marine Corps in active service who shall be absent from duty on account of injury, sickness or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct, shall receive pay for the period of such absence, the time so absent and the cause thereof to be ascertained under such procedure and regulations as may be prescribed by the Secretary of the Navy: *Provided*, That an enlistment shall not be regarded as complete until the enlisted man shall have made good any time in excess of one day lost on account of injury, sickness or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct. [39 Stat. L. 580.]

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —, by inserting after the words "on account of," in the second line, the word "injury," followed by a comma, and by inserting after the words "on account of," in the ninth line, the word "injury," followed by a comma.

[Enlisted men — furlough without pay.] * * * The Secretary of the Navy is hereby authorized to grant furlough without pay to enlisted men for a period covering the unexpired portion of their enlistment: *Provided*, That such furlough be granted under the same conditions and in lieu of discharge by purchase or by special order of the department. Enlisted men so furloughed shall be subject to recall in time of war or national emergency to complete the unexpired portion of their enlistment, and shall be in addition to the authorized number of enlisted men of the Navy. [39 Stat. L. 580.]

[Surgeons — increase — details — Red Cross.] * * * Hereafter the authorized number of surgeons in the United States Navy be, and it is hereby, increased by one; and that hereafter the Secretary of the Navy be, and he is hereby authorized to detail one or more officers of the Medical Corps of the United States Navy for duty with the Military Relief Division of the American National Red Cross. [39 Stat. L. 581.]

[Retired officers — detail on active duty — pay.] * * * No officer who, after having commanded a fleet in active commission, has been retired for age and whom, in the judgment of the Secretary of the Navy, the public interests make it necessary to retain for a time after said retirement and who is performing active duty as chairman of the executive committee of the General Board, shall, for the period so retained, suffer any reduction in the emoluments he was receiving at the time of his retirement: *Provided*, That hereafter any retired officer of the naval service who shall be detailed on active duty shall, while so serving, receive the active duty pay and allowances of the grade, not above that of lieutenant commander in the Navy or of major in the Marine Corps, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement: *Provided*, That nothing herein shall be construed to reduce the pay of any retired officer on active duty whose retired pay exceeds the active duty pay and allowances for the grade of lieutenant commander. [39 Stat. L. 581.]

[Officers of active list of Navy — pay and allowances.] * * * Hereafter all commissioned officers of the active list of the Navy shall receive the same pay and allowances according to rank and length of service: *Provided*, That this provision shall not be construed to reduce the pay and allowances of commissioned warrant officers as herein authorized. [39 Stat. L. 581.]

[Accounts of disbursing officers — payments for telephones.] * * * That the accounting officers of the United States Treasury are hereby authorized and directed to allow in the accounts of disbursing officers of the Navy all payments for telephones in Government quarters which have been disallowed under section seven of the Act of August twenty-third, nineteen hundred and twelve (Thirty-seventh Statutes, pages one and four hundred and fourteen), by decision of the Comptroller. [39 Stat. L. 581.]

For the Act of Aug. 23, 1912, ch. 350, § 7, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 143; 3 Fed. Stat. Ann. (2d ed.) 154.

[Administration of justice — summary and general courts-martial — powers — courts of inquiry.] Hereafter all officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial may order deck courts upon enlisted men under their command, and shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel.

Summary courts-martial may be ordered upon enlisted men in the naval service under his command by the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, and, when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing: *Provided*, That when so empowered by the Secretary of the Navy to order summary courts-martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval

vessel is authorized by law to inflict, upon all enlisted men of the naval service attached thereto, whether for duty or as patients.

No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: *Provided*, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof.

When empowered by the Secretary of the Navy, general courts-martial may be convened by the commanding officer of a squadron, of a division, of a flotilla, or of a larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States: *Provided*, That in time of war, if then so empowered by the Secretary of the Navy, general courts-martial may be convened by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.

Courts of inquiry may be convened by any officer of the naval service authorized by law to convene general courts-martial.

When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organization of marines shall be the same as though such organization were serving at a navy yard on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon. [39 Stat. L. 586.]

[Oaths — by whom administered — former Act amended.] * * *

The Act entitled "An Act authorizing certain officers of the Navy and Marine Corps to administer oaths," approved January twenty-fifth, eighteen hundred and ninety-five, as amended by the Act of March third, nineteen hundred and one, be, and the same is hereby, further amended so as to read as follows:

The judges advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the Regular Navy and Marine Corps, of the Naval Reserve Force, of the Marine Corps Reserve, and of the National Naval Volunteers as may be hereafter designated by the Secretary of the Navy, be, and they are hereby, authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration. [39 Stat. L. 1171.]

This and the four paragraphs of the text following are from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the Act of Jan. 25, 1895, ch. 45, as amended by the Act of March 3, 1901, ch. 834, and further amended by this paragraph, see 5 Fed. Stat. Ann. 280; 6 Fed. Stat. Ann. (2d ed.) 1166.

[Boards of medical examiners, examining boards and retiring boards — by whom ordered.] * * * That hereafter the Secretary of the Navy may authorize the senior officer present, or other commanding officer, on a foreign station to order boards of medical examiners, examining boards, and retiring boards for the examination of such candidates for appointment, promotion, and retirement in the Navy and Marine Corps as may be serving in such officer's command and may be directed to appear before any such board. [39 Stat. L. 1171.]

See the note to the preceding paragraph of the text.

[Naval home — proceeds from sale of material and rentals — disposition.] * * * That all moneys derived from the sale of material at the Naval Home, which was originally purchased from moneys appropriated from the income from the naval pension fund, and all moneys derived from the rental of Naval Home property, shall hereafter be turned into the naval pension fund. [39 Stat. L. 1175.]

See the note to the first paragraph of this Act, *supra*, p. 521.

[Examination of officers for promotion — advancement of staff officers — dental surgeons.] Hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list, the same as though such advancements in rank were promotions to higher grades: *Provided*, That nothing in this paragraph shall be construed as in any way affecting the original appointment of officers to the Dental Corps as provided in the Act approved August twenty-ninth, nineteen hundred and sixteen, making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, and the time served by dental surgeons as acting or acting assistant dental surgeons shall be reckoned in computing the increased service pay and service for promotion of such as are commissioned under said Act. [39 Stat. L. 1182.]

See the note to the first paragraph of this Act, *supra*, p. 521.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

[Certificate of discharge — forging, counterfeiting or altering — penalty.] * * * Whoever shall forge, counterfeit, or falsely alter any certificate of discharge from the military or naval service of the United States, or shall in any manner aid or assist in forging, counterfeiting, or falsely altering any such certificate, or shall use, unlawfully have in his possession, exhibit, or cause to be used or exhibited, any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court. [39 Stat. L. 1182.]

See the note to the first paragraph of this Act, *supra*, p. 521.

An Act To provide for the extension of minority enlistments in the naval service.

[*Act of April 25, 1917, ch. —, — Stat. L. —.*]

[**Minority enlistments — extension.**] That hereafter any enlistment for minority in the Navy or Marine Corps may be extended as is provided by law for extending an enlistment for a term of four years, under similar conditions and with like rights, privileges, benefits, and obligations. [*— Stat. L. —.*]

An Act To authorize the detail of additional officers to the Hydrographic Office.

[*Act of April 25, 1917, ch. —, — Stat. L. —.*]

[**Hydrographic Office — detail of naval officers.**] That the Secretary of the Navy be, and he is hereby, authorized to detail such naval officers as may be necessary to the Hydrographic Office during the continuance of the present war. [*— Stat. L. —.*]

[**SEC. 1.**] [**Navy — enlisted strength — increase.**] That the authorized enlisted strength of the active list of the Navy is hereby temporarily increased from one hundred and thirty-one thousand four hundred and eighty-five to one hundred and eighty-one thousand four hundred and eighty-five; the authorized number of apprentice seamen is hereby temporarily increased from six thousand to twenty-four thousand; and the authorized number of enlisted men of the Flying Corps is hereby temporarily increased from three hundred and fifty to ten thousand: *Provided*. That the phrase ‘authorized enlisted strength,’ as applied to the personnel of the Navy, shall mean the total number of enlisted men of the Navy authorized by law, exclusive of the Hospital Corps, apprentice seamen, those sentenced by court-martial to discharge, those detailed for duty with Naval Militia, those furloughed without pay, enlisted men of the Flying Corps, and those under instruction in trade schools: *Provided further*, That the number of enlisted men for instruction in trade schools shall not at any time exceed fourteen thousand, which number is hereby temporarily authorized: *Provided further*, That the President is authorized, at any time during the period of the present war, when in his judgment it becomes necessary, temporarily to increase the authorized enlisted strength of the Navy, as provided for herein, by the addition of fifty thousand men. [*— Stat. L. — as amended by — Stat. L. —.*]

This section 1 and the following sections 3-9, 11-13, 15, 17, 18, 20, and 21 are from an Act of May 22, 1917, ch. —, entitled “An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes.”

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

“[**SEC. 1.**] That the authorized enlisted strength of the active list of the Navy is hereby temporarily increased from eighty-seven thousand to one hundred and fifty thousand, including four thousand additional apprentice seamen.”

SEC. 3. [Period of enlistments.] That enlistments in the Navy and Marine Corps, during such time as the United States may be at war, shall be for four years or for such shorter period or periods as the President may prescribe, or for the period of the present war. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

SEC. 4. [Additional commissioned officers.] Additional commissioned officers in the Navy and Marine Corps, based upon the temporary increases herein authorized in the number of enlisted men, shall be temporarily appointed by the President, in his discretion, with the advice and consent of the Senate, not above the grades and ranks of lieutenant commander in the line and staff of the Navy and major in the Marine Corps, the distribution in said grades and ranks to be made in accordance with the provisions of the Act of August twenty-ninth, nineteen hundred and sixteen: *Provided*, That all temporary original appointments shall be made in the lowest commissioned grades of the line and staff of the Navy and Marine Corps, exclusive of commissioned warrant officers, and that there shall be no permanent or temporary appointments in or permanent or temporary promotions to any grade or rank above that of lieutenant commander in the Navy or major in the Marine Corps by reason of the temporary appointment of officers authorized by this Act in excess of the total number of officers authorized by existing law or on account of the increase of enlisted men herein authorized: *Provided further*, That, during the period of the present war, the deficiency existing prior to the passage of this Act in the total number of commissioned officers of the Navy and Marine Corps authorized by the Act of August twenty-ninth, nineteen hundred and sixteen, may also be supplied by temporary appointments in the lowest grades and by temporary promotions to all other grades until a sufficient number of officers shall be available for regular appointment or promotion in accordance with existing law: *Provided further*, That nothing herein shall be held or construed to limit or abridge the use or service of the officers of the Navy and Marine Corps on the retired list or of the officers of the Naval Militia and National Naval Volunteers, Naval Reserve Force, and Marine Corps Reserve, as provided and authorized under existing law: *Provided further*, That temporary chaplains and temporary acting chaplains in the Navy may be appointed for service during the period of the war in the proportion of the personnel of the Navy as now prescribed by existing law: *Provided further*, That, based on the temporary increase of enlisted men of the Marine Corps herein authorized, the President, by and with the advice and consent of the Senate, is authorized, in his discretion, temporarily to appoint not exceeding six brigadier generals, twenty-two colonels, and twenty-two lieutenant colonels in the Marine Corps in addition to the number permanently allowed by law in those grades; said temporary appointments shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the same and not later than six months after the termination of the present war. [— *Stat. L.* — as amended by — *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 4. Additional commissioned officers in the Navy and Marine Corps, based upon the temporary increases herein authorized in the number of enlisted men, shall be temporarily appointed by the President, in his discretion, with the advice and consent of the Senate, not above the grades and ranks of lieutenant in the line and staff of the Navy and major in the Marine corps, the distribution in said grades and ranks to be made in accordance with the provisions of the Act of August twenty-ninth, nineteen hundred and sixteen: *Provided*, That all temporary original appointments shall be made in the lowest commissioned grades of the line and staff of the Navy and Marine Corps, exclusive of commissioned warrant officers, and that there shall be no permanent or temporary appointments in or permanent, or temporary promotions, to any grade or rank above that of lieutenant in the Navy or major in the Marine Corps by reason of the temporary appointment of officers authorized by this Act in excess of the total number of officers authorized by existing law or on account of the increase of enlisted men herein authorized: *Provided further*, That, during the period of the present war, the deficiency existing prior to the passage of this Act in the total number of commissioned officers of the Navy and Marine Corps authorized by the Act of August twenty-ninth, nineteen hundred and sixteen, may also be supplied by temporary appointments in the lowest grades and by temporary promotions to all other grades until a sufficient number of officers shall be available for regular appointment or promotion in accordance with existing law: *Provided further*, That nothing herein shall be held or construed to limit or abridge the use or service of the officers of the Navy and Marine Corps on the retired list or of the officers of the Naval Militia and National Naval Volunteers, Naval Reserve Force and Marine Corps Reserve, as provided and authorized under existing law: *Provided further*, That temporary chaplains and temporary acting chaplains in the Navy may be appointed for service during the period of the war in the proportion of the personnel of the Navy as now prescribed by existing law."

SEC. 5. [Additional temporary officers.] That the additional temporary officers authorized in the various grades and ranks of the Navy and Marine Corps in accordance with the next preceding section may be temporarily appointed to serve in the grades or ranks to which appointed or promoted by the temporary advancement of officers holding permanent and probational commissions, by temporary appointment of commissioned warrant officers, warrant officers, and enlisted men of the Navy, and warrant officers, noncommissioned officers, and clerks to assistant paymasters of the Marine Corps, commissioned and warrant officers of the United States Coast Guard, citizens of the United States who have had previous naval or military service or training, and other citizens of the United States specially qualified: *Provided*, That such chief warrant officers as are given the temporary appointments provided herein who were chief warrant officers in the permanent Navy on July first, nineteen hundred and seventeen, and were not given such temporary appointments as of that date because of age restriction or ill health, shall take rank and precedence with the other chief warrant officers temporarily appointed as of July first, nineteen hundred and seventeen, and according to their seniority as chief warrant officers in the permanent service: *Provided further*, That in making appointments authorized herein the maximum age limit shall be fifty years for enlisted men to ensign, enlisted men of the Navy to warrant rank, noncommissioned officers of the Marine Corps to commissioned rank, members of the Marine Corps branch of the Naval Militia and National Naval Volunteers, Marine Corps Reserve, and civilians specially qualified to commissioned rank, and temporary chaplains and temporary acting chaplains: *Provided further*, That graduates of the Naval Academy and warrant officers duly commissioned in the Navy or Marine Corps in accordance with existing law shall not, by virtue of this Act, be required to receive temporary appointments;

and the class of midshipmen graduated from the Naval Academy on March twenty-ninth, nineteen hundred and seventeen, and the classes to be graduated hereafter, may be commissioned effective from date of graduation: *Provided further*, That temporary appointments as warrant officers of the Navy may be made by the Secretary of the Navy: *Provided further*, That temporary appointments as chief warrant officers may be made by the President with the consent of the Senate: *Provided further*, That the temporary appointment for the war of seventy-six additional marine gunners, and seventy-six additional quartermaster clerks, is authorized: *Provided further*, That lieutenants (junior grade) and ensigns may be considered eligible for temporary promotions to the grades of lieutenant and lieutenant (junior grade), respectively, without regard to length of service in grade. [— *Stat. L.* — as amended by — *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 5. That the additional temporary officers authorized in the various grades and ranks of the Navy and Marine Corps in accordance with the next preceding section may be temporarily appointed to serve in the grades or ranks to which appointed or promoted by temporary advancement of officers holding permanent and probationary commissions, by temporary appointment of commissioned warrant officers, warrant officers, and enlisted men of the Navy, and warrant officers, noncommissioned officers, and clerks to assistant paymasters of the Marine Corps, commissioned and warrant officers of the United States Coast Guard, citizens of the United States who have had previous naval or military service or training, and other citizens of the United States specially qualified: *Provided*, That in making appointments authorized herein the maximum age limit shall be fifty years for commissioned warrant officers, warrant officers, and enlisted men to ensign, enlisted men of the Navy to warrant rank, candidates for assistant surgeon, noncommissioned officers of the Marine Corps to commissioned rank, members of the Marine Corps branch of the Naval Militia and National Naval Volunteers, Marine Corps Reserve, and civilians specially qualified to commissioned rank, and warrant officers of the active list of the Marine Corps appointed to commissioned rank, and temporary chaplains and temporary acting chaplains: *Provided further*, That graduates of the Naval Academy and warrant officers duly commissioned in the Navy or Marine Corps in accordance with existing law shall not, by virtue of this Act, be required to receive temporary appointments; and the class of midshipmen graduated from the Naval Academy on March twenty-ninth, nineteen hundred and seventeen, and the classes to be graduated hereafter, may be commissioned effective from date of graduation: *Provided further*, That temporary appointments as warrant officers of the Navy may be made by the Secretary of the Navy: *Provided further*, That lieutenants (junior grade) and ensigns may be considered eligible for temporary promotions to the grades of lieutenant and lieutenant (junior grade), respectively, without regard to length of service in grade."

SEC. 6. [Computations — promotions.] That during the period of the present war the computations to be made by the Secretary of the Navy as prescribed by the Act of August twenty-ninth, nineteen hundred and sixteen, shall be made semiannually as of July first and January first of each year and at such other times as he may deem necessary; and the Board of Rear Admirals for selection for promotion prescribed in said Act may be convened at such times as the exigencies of the service may require and shall recommend for promotion such number of officers as the Secretary of the Navy may prescribe to fill vacancies in the several grades as provided by existing law. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 7. [Vacation of commissions — temporary appointments — pay — grades.] That the permanent and probationary commissions, appointments, and warrants of officers shall not be vacated by reason of their temporary advancement or appointment, nor shall said officers be prejudiced in their relative lineal rank in regard to promotion in accordance with the Act of August twenty-ninth, nineteen hundred and sixteen: *Provided*, That the rights, benefits, privileges, and gratuities of all enlisted men of the Navy and Marine Corps now authorized by law shall not be lost or abridged in any respect whatever by their acceptance of temporary commissions or warrants hereunder: *Provided further*, That no person who shall receive a temporary appointment shall be entitled to pay or allowances except under such temporary appointment: *And provided further*, That upon the termination of temporary appointments in a higher grade or rank as authorized by this Act the officers so advanced, including probationary second lieutenants, warrant officers, clerks to assistant paymasters, and enlisted men of the Navy and Marine Corps, commissioned and warrant officers of the United States Coast Guard, shall revert to the grade, rank, or rating from which temporarily advanced, unless such officers or enlisted men in the meantime, in accordance with law, become entitled to promotion to a higher grade or rank in the permanent Navy or Marine Corps, in which case they shall revert to said higher grade or rank and shall, after passing the prescribed examinations, be commissioned accordingly. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 8. [Temporary appointments and advancements — duration.] That all temporary appointments or advancements authorized by this Act shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the authorization for the increases herein provided and not later than six months after the termination of the present war. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 9. [Temporary appointments and advancements — retired list.] That any officer of the permanent Navy or Marine Corps, temporarily advanced in grade or rank in accordance with the provisions of this Act, who shall be retired from active service under his permanent commission while holding such temporary rank, except for physical disability incurred in line of duty, shall be placed on the retired list with the grade or rank to which his position in the permanent Navy or Marine Corps at the date of his retirement would entitle him, and any person originally appointed temporarily, as provided in this Act, shall not be entitled to any rights of retirement, except for physical disability incurred in line of duty. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 11. [Increase in number of gunners and clerks.] That the appointment of thirty marine gunners, thirty quartermaster's clerks, and nine

clerks to assistant paymasters, additional to the number now prescribed by law, and the temporary appointment of eight clerks to assistant paymasters for the war, is hereby authorized, such appointments to be made in the manner now provided by law. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 12. [Temporary appointments and promotions — how made.] That the temporary appointments and promotions herein authorized shall be made by the President, with the advice and consent of the Senate. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 13. [Reduction of rank, pay or allowances.] Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 15. [Enlisted men — increases of pay.] That commencing June first, nineteen hundred and seventeen, and continuing until not later than six months after the termination of the present war, all enlisted men of the Navy of the United States in active service whose base pay does not exceed \$21 per month shall receive an increase of \$15 per month; those whose base pay is over \$21 and does not exceed \$24 per month, an increase of \$12 per month; those whose base pay is over \$24 and less than \$45 per month, an increase of \$8 per month; and those whose base pay is \$45 or more per month, an increase of \$6 per month: *Provided*, That the increases of pay herein authorized shall not enter into the computation of continuous-service pay. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 17. [Medical Corps — officers — precedence promotions.] That nothing contained in the Act of August twenty-ninth, nineteen hundred and sixteen, shall operate to disturb the relative position of officers in the Medical Corps with reference to precedence or promotion, but all such officers otherwise qualified shall be advanced in rank with or ahead of officers in said corps who were their juniors on the date of said Act. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 18. [Admirals — Vice Admirals — former Act repealed.] That the President be, and he is hereby, further authorized to designate six officers of the Navy for the command of fleets or subdivisions thereof and, after being so designated from the date of assuming such command until relinquishing thereof, not more than three of such officers shall each have the rank and pay of an admiral, and the others shall each have the rank and pay of a vice admiral; and the grades of admiral and vice admiral are

hereby authorized and continued for the purpose of this Act: *Provided*, That in time of war the selections under the provisions of this section shall be made from the grades of rear admiral or captain on the active list of the Navy: *Provided further*, That the pay of an admiral shall be \$10,000 and the pay of a vice admiral \$9,000 per annum: *Provided further*, That in time of peace officers for the command of fleets and subdivisions thereof, as herein authorized, shall be designated from among the rear admirals on the active list of the Navy: *Provided further*, That nothing herein contained shall create any vacancy in any grade in the Navy or increase the total number of officers authorized by law: *Provided further*, That when an officer with the rank of admiral or vice admiral is detached from the command of a fleet or subdivision thereof, as herein authorized, he shall return to his regular rank in the list of officers of the Navy and shall thereafter receive only the pay and allowances of such rank: *And provided further*, That nothing in this Act shall be held or construed as amending or repealing the provisions of sections fourteen hundred and thirty-four, fourteen hundred and sixty-three, and fourteen hundred and sixty-four of the Revised Statutes of the United States.

That the provision in the Act approved March third, nineteen hundred and fifteen, for the designation of commanders in chief of certain fleets with the rank of admiral and for the designation of officers second in command of such fleets with the rank of vice admiral be, and the same is hereby, repealed. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

For R. S. secs. 1437, 1463, 1464, mentioned in this section, see 5 Fed. Stat. Ann. 279, 285; 6 Fed. Stat. Ann. (2d ed.) 1110, 1123.

For the provisions of the Act of March 3, 1915, ch. 83, repealed by the text, see 1916 Supp. Fed. Stat. Ann. 177; 6 Fed. Stat. Ann. (2d ed.) 1106.

SEC. 20. [Examinations.] That hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list the same as though such advancements in rank were promotions to higher grades: *Provided*, That examinations for such staff officers shall not be required except for such regular advancements in rank: *Provided further*, That the President be, and he is hereby, authorized to direct the Secretary of the Navy to take such action on the records of proceedings of naval examining boards and boards of naval surgeons for the promotion of officers of the Navy as is now required by law to be taken by the President. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 21. [Extra allowance of food.] That during the continuance of the present war an extra allowance of one ounce of coffee or cocoa, two ounces of sugar, four ounces of hard bread or its equivalent, and four ounces of preserved meat or its equivalent shall be allowed to enlisted men of the deck force when standing night watches between eight o'clock post-meridian and eight o'clock antemeridian. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

An Act To provide for the payment of six months' gratuity to the widow, children, or other previously designated dependent relative of retired officers or enlisted men on active duty.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**Gratuity pay — widows, etc.— former Act amended.**] That the paragraph of the Act approved August twenty-second, nineteen hundred and twelve, entitled "An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," as amended by the Act of March third, nineteen hundred and fifteen, which provides for the payment of six months' gratuity to the widow or children or other previously designated dependent relative of a deceased officer or enlisted man on the active list of the Navy and Marine Corps, be, and the same is hereby, amended by inserting after the words "on the active list of the Navy or Marine Corps" a comma and the words "or of any retired officer or enlisted man serving on active duty during the continuance of the present war." [— *Stat. L. —.*]

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290.

For the amendatory Act of March 3, 1915, ch. 83, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 174.

Said Act of Aug. 22, 1912, ch. 335, constituted an amendment of a paragraph of the Act of May 13, 1908, ch. 166, given in 6 Fed. Stat. Ann. (2d ed.) 1210. See the note thereto.

An ACT To establish certain new ratings in the United States Navy, and for other purposes.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**New ratings — engineers, mechanics, etc.**] That the ratings engine-man, first class, engineman, second class; blacksmith, first class, blacksmith, second class; coppersmith, first class, coppersmith, second class; pattern maker, first class, pattern maker, second class; molder, first class, molder, second class; chief special mechanic and special mechanic, first class, be, and they are hereby, established in the artificer branch of the Navy with the following rates of base pay per month: Engineman, first class, \$45; engineman, second class, \$40; blacksmith, first class, \$65; blacksmith, second class, \$50; coppersmith, first class, \$65; coppersmith, second class, \$50; pattern maker, first class, \$65; pattern maker, second class, \$50; molder, first class, \$65; molder, second class, \$50; chief special mechanic, \$127; special mechanic, first class, \$80: *Provided*, That the base pay of machinists' mates, second class, and water tenders be, and it is hereby, increased from \$40 to \$45 per month: *Provided further*, That all the aforesaid rates of pay shall be subject to such increases of pay and allowances as are, or may hereafter be, authorized by law for enlisted men of the Navy: *And provided further*, That appointments or enlistments in the said ratings may be made from enlisted men in the Navy or from civil life, respectively, and the qualifications of candidates for any of said ratings shall be determined in accordance with such regulations as the Secretary of the Navy may prescribe. [— *Stat. L. —.*]

An Act To provide for the service of officers of auxiliary naval forces on naval courts.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[Naval courts — service of officers of auxiliary naval forces — former Acts repealed.] That when actively serving under the Navy Department in time of war or during the existence of an emergency, pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve Force, Marine Corps Reserve, National Naval Volunteers, Naval Militia, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service are hereby empowered to serve on naval courts-martial and deck courts under such regulations necessary for the proper administration of justice and in the interests of the services involved, as may be prescribed by the Secretary of the Navy: * * *

Provided further, That so much of the Naval Militia Act of February sixteenth, nineteen hundred and fourteen (Thirty-eighth Statutes, page two hundred and eighty-three), as reads as follows:

“That when in the service of the United States officers of the Naval Militia may serve on courts-martial for the trial of officers and men of the Regular or Naval Militia service, but in the cases of courts-martial convened for the trial of officers of the Regular service, the majority of the members shall be officers of the Regular service; and officers and men of the Naval Militia may be tried by courts-martial the members of which are officers of the Regular or Naval Militia service, or both,” is hereby repealed.

And provided further, That any Act or parts of Acts in conflict with the provisions hereof are hereby repealed. [— *Stat. L.*—]

For the Act of Feb. 16, 1914, ch. 21, § 5, in part repealed by the text, see 1916 Supp. Fed. Stat. Ann. 150.

The first proviso of this Act, omitted here, repealed a provision of the Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 597, which was as follows:

“That when serving under the call of the President, officers of said Volunteers may serve on courts-martial for the trial of officers and men of the United States Naval or Naval Militia service, or of said Volunteers, but in the cases of courts-martial convened for the trial of officers or enlisted men of the United States Navy or Marine Corps, the majority of the members shall be officers of the Regular Naval service, and officers and enlisted men of the said Volunteers may be tried by courts-martial, the members of which are members of the Regular Naval service, or of said Volunteers, or any or all of the same.”

An Act To promote the efficiency of the United States Navy.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[Alcoholic liquors — prohibition of sale — houses of ill fame.] That in construing the provisions of sections twelve and thirteen of the selective-draft Act approved May eighteenth, nineteen hundred and seventeen, the word “Army” shall extend to and include “Navy”; the word “military” shall include “naval”; “Article of War” shall include “Articles for the Government of the Navy”; the words “camps, station, cantonment, camp, fort, post, officers’ or enlisted men’s club,” in section twelve, and “camp, station, fort, post, cantonment, training, or mobilization place,” in section thirteen, shall include such places under naval jurisdiction as the

President may prescribe, and the powers therein conferred upon the Secretary of War with regard to the military service are hereby conferred upon the Secretary of the Navy with regard to the naval service. [— *Stat. L.* —.]

The Selective Draft Act of May 18, 1917, ch. —, §§ 12, 13, mentioned in the text, is given under WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

An Act To amend section fifteen hundred and eighty-five of the Revised Statutes of the United States.

[*Act of Oct. 6, 1917, ch. —, — Stat. L.* —.]

[**Commutation price of ration — R. S. sec. 1585 amended.**] That section fifteen hundred and eighty-five of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

“SEC. 1585. Forty cents shall in all cases be deemed the commutation price of the Navy ration: *Provided, however,* That after January first, nineteen hundred and eighteen, the commutation price shall not exceed the average cost of the ration during the preceding six months, not to exceed 40 cents.” [— *Stat. L.* —.]

For R. S. sec. 1585, amended by this Act, see 5 Fed. Stat. Ann. 337; 6 Fed. Stat. Ann. (2d ed.) 1186.

An Act To provide for the reimbursement of officers, enlisted men, and others in the naval service of the United States for property lost or destroyed in such service.

[*Act of Oct. 6, 1917, ch. —, — Stat. L.* —.]

[**Reimbursement of officers and men for property damaged, lost, etc. — nature of reimbursement — claims — time limit — method of submitting — application to Coast Guard — Acts repealed.**] That the paymaster General of the Navy be, and he is hereby, authorized and directed to reimburse such officers, enlisted men, and others in the naval service of the United States as may have suffered, or may hereafter suffer, loss or destruction of or damage to their personal property and effects in the naval service due to the operations of war or by shipwreck or other marine disaster when such loss, destruction, or damage was without fault or negligence on the part of the claimant, or where the private property so lost, destroyed, or damaged was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment, or where it appears that the loss, destruction, or damage of or to the private property of the claimant was in consequence of his having given his attention to the saving of the lives of others or of property belonging to the United States which was in danger at the same time and under similar circumstances. And the liability of the Government under this Act shall be limited to such articles of personal property as the Chief of the Bureau of Navigation of the Navy Department with reference to the personnel of the Navy, or the major general commandant of the Marine Corps, with reference to the personnel of that corps, in his discretion, shall decide to be reasonable, useful, and

proper for such officer, enlisted man, or other person while engaged in the public service in line of duty, and the certificate of said chief of bureau or major general commandant, as the case may be, shall be sufficient voucher for and shall be final as to all matters necessary to the establishment and payment or settlement of any claim filed hereunder; and the action of the said chief of bureau or major general commandant, as the case may be, upon all claims arising under this Act shall be final, and no right to prosecute a claim or action in the Court of Claims or in any other court of the United States, or before any accounting officer of the United States, or elsewhere, except as herein provided, shall accrue to any person by virtue of this Act: *Provided*, That the liability of the Government under this Act shall be limited to such articles of personal property as are required by the United States Naval Regulations and in force at the time of loss or destruction for such officers, petty officers, seamen, or others engaged in the public service in the line of duty: *Provided further*, That with reference to claims of persons in the Marine Corps filed under the terms of this Act the paymaster of the Marine Corps shall make the reimbursement in money, and the quartermaster of the Marine Corps shall make the reimbursement in kind herein provided for: *And provided further*, That all claims now existing under this Act shall be presented within two years from the passage hereof and not thereafter; and all such claims hereafter arising shall be presented within two years from the occurrence of the loss, destruction, or damage: *And provided further*, That the term "in the naval service," as herein employed, shall be held to include service performed on board any vessel, whether of the Navy or not, provided the claimant is serving on such vessel pursuant to the orders of duly constituted naval authority: *And provided further*, That all claimants under this Act shall be required to submit their claims in writing and under oath to the said Chief of the Bureau of Navigation or major general commandant, as the case may be: *And provided further*, That claims arising in the manner indicated in this Act and which have been settled under the terms of previously existing law shall be regarded as finally determined and no other or further right of recovery under the provisions hereof shall accrue to persons who have submitted such claims as aforesaid: *And provided further*, That sections two hundred and eighty-eight, two hundred and eighty-nine, and two hundred and ninety, Revised Statutes, and the Act of March second, eighteen hundred and ninety-five (Twenty-eighth Statutes, page nine hundred and sixty-two), are hereby repealed: *And provided further*, That reimbursement for loss, destruction, or damage sustained and determined as herein provided shall be made in kind for such articles as are customarily issued to the service and shall be made in money for other articles at the valuation thereof at the time of their loss, destruction, or damage: *And provided further*, That in cases involving persons in the Navy reimbursement in money shall be made from the appropriation "Pay of the Navy," and reimbursement in kind shall be made from the appropriation "Outfits on first enlistment," and in cases involving persons in the Marine Corps reimbursement in money shall be made from the appropriation "Pay, Marine Corps," and reimbursement in kind shall be made from the appropriation "Clothing, Marine Corps," respectively, current at the time the claim covering such loss, damage, or destruction is paid: *And provided further*, That the provisions of this Act shall apply to the personnel of the Coast Guard in like manner as to the per-

sonnel of the Navy, whether the Coast Guard is operating under the Treasury Department or operating as a part of the Navy, and all of the duties, which, under this Act, devolve upon the major-general commandant of the Marine Corps with reference to the personnel of that corps, shall devolve upon the captain commandant of the Coast Guard, and in cases involving persons in the Coast Guard reimbursement in money shall be made by a disbursing officer of the Coast Guard from the appropriation "Coast Guard" and reimbursement in kind shall be made by the captain commandant from the appropriation "Coast Guard." [— *Stat. L.* —.]

For R. S. secs. 288, 289, 290, and the Act of March 2, 1895, ch. 190, repealed by this Act, see 5 Fed. Stat. Ann. 309; 6 Fed. Stat. Ann. (2d ed.) 1163, 1164, 1165.

[SEC. 1.] **[Facilities for construction of additional torpedo boat destroyers — acquisition.]** * * * For acquiring and providing facilities for the expeditious construction of additional torpedo-boat destroyers, and for each and every purpose connected therewith, and toward their construction, to cost in all not more than \$350,000,000, \$225,000,000, or so much thereof as may be necessary, to be expended at the direction and in the discretion of the President.

The President is hereby authorized and empowered, within the amount hereinbefore authorized, to acquire or provide facilities additional to those now in existence for the construction of torpedo-boat destroyers, their hulls, machinery, and appurtenances, including the immediate taking over for the United States of the possession of and title to land, its appurtenances and improvements, which he may find necessary in this connection.

That if said lands and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, section one hundred and forty-five of the Judicial Code.

Upon the taking over of said property by the President as aforesaid the title to all property so taken over shall immediately vest in the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. ____.

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

An Act To authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Dominican Republic, and for other purposes.

[*Act of Feb. 11, 1918, ch. —, — Stat. L. —.*]

[Navy and Marine Corps — officers and enlisted men — detail to assist Dominican Republic.] That the President of the United States be, and

he is hereby, authorized, in his discretion, to detail to assist the Dominican Republic, officers and enlisted men of the United States Navy and the United States Marine Corps: *Provided*, That officers and enlisted men so detailed be, and they are hereby, authorized to accept from the Government of the Dominican Republic offices under said Government with compensation and emoluments from the said Dominican Republic, subject to the approval of the President of the United States: *Provided further*, That while so detailed such officers and enlisted men shall receive, in addition to the compensation and emoluments allowed them by the Dominican Republic, the pay and allowances of their rank or rating in the United States Navy or United States Marine Corps, as the case may be, and they shall be entitled to the same credit, while so serving, for longevity, retirement, foreign-service pay, and for all other purposes that they would receive if they were serving with the United States Navy or Marine Corps in said Dominican Republic. [— *Stat. L.* —.]

An Act To amend section fifteen hundred and seventy of the Revised Statutes of the United States.

[*Act of March 29, 1918, ch. —, — Stat. L. —.*]

[**Seaman, landsman or marine — additional pay for serving as fireman — R. S. sec. 1570 amended.**] That section fifteen hundred and seventy of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

“ SEC. 1570. Every seaman, landsman, or marine who performs the duty of a fireman on board any vessel of war shall be entitled to receive, in addition to his compensation as seaman, landsman, or marine, a compensation at the rate of 33 cents a day for the time he is employed as fireman.”
[— *Stat. L.* —.]

For R. S. sec. 1570, see 5 Fed. Stat. Ann. 330; 6 Fed. Stat. Ann. (2d ed.) 1179.

An Act To authorize the payment of gun pointers and gun captains while temporarily absent from their regular stations, and for other purposes.

[*Act of March 29, 1918, ch. —, — Stat. L.*]

[**Gun pointers and gun captains — additional pay while temporarily absent.**] That during the period of the present war any enlisted man of the Navy or Marine Corps who has qualified, or who may hereafter qualify, as a gun pointer or gun captain, and who has been, or may hereafter be, detailed as gun pointer or gun captain for a gun of the class for which qualified, shall be entitled to the additional pay now or hereafter provided for such qualification and detail while temporarily absent by proper authority from the place where ordinarily required to perform duty under such detail, or while performing temporary duty which is not connected with such detail as gun pointer or gun captain. [— *Stat. L.* —.]

An Act To provide for the disposition of the effects of deceased persons in the naval service.

[*Act of March 29, 1918, ch. —, — Stat. L. —.*]

[**Deceased persons in naval service — disposition of effects.**] That hereafter all moneys, articles of value, papers, keepsakes, and other similar effects belonging to deceased persons in the naval service, not claimed by their legal heirs or next of kin, shall be deposited in safe custody, and if any such moneys, articles of value, papers, keepsakes, or other similar effects so deposited have been, or shall hereafter be, unclaimed for a period of two years from the date of the death of such person, such articles and effects shall be sold and the proceeds thereof, together with the moneys above mentioned, shall be deposited in the Treasury to the credit of the Navy pension fund: *Provided*, That the Secretary of the Navy is hereby authorized and directed to make diligent inquiry in every instance after the death of such person to ascertain the whereabouts of his heirs or next of kin, and to prescribe such regulations as may be necessary to carry out the foregoing provisions: *Provided further*, That claims may be presented hereunder at any time within five years after such moneys or proceeds have been so deposited in the Treasury, and, when supported by competent proof in any case after such deposit in the Treasury, shall be certified to Congress for consideration. [*— Stat. L. —.*]

An Act To authorize the President to drop from the rolls any naval or Marine Corps officer absent without leave for three months, or who has been convicted of any offense punishable by confinement in the penitentiary by the civil authorities, and prohibiting such officer's reappointment.

[*Act of April 2, 1918, ch. —, — Stat. L. —.*]

[**Naval or marine corps officers — dropping from rolls by President — reappointment.**] That the President is hereby authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: *Provided*, That no officer so dropped shall be eligible for reappointment. [*— Stat. L. —.*]

An Act To regulate the pay of retired chief warrant officers and warrant officers on active duty.

[*Act of April 10, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Retired chief warrant officers — pay — active duty.**] That any retired chief warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time

as he has been or may hereafter be, on active duty, and from the time his service on the active list after date of commission, plus his service on active duty while on the retired list, is equal to six years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been, or may hereafter be, on active duty, and from the time such total service is equal to twelve years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant, United States Navy. [— *Stat. L. —*.]

SEC. 2. [Retired warrant officers — pay — active duty.] That any retired warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time as he has been or may hereafter be on active duty, and from the time his service on the active list after date of warrant, plus his service on active duty while on the retired list, is equal to twelve years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been or may hereafter be on active duty, and from the time such total service is equal to eighteen years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant, United States Navy. [— *Stat. L. —*.]

An Act To authorize the Secretary of the Navy to increase the facilities for the proof and test of ordnance material, and for other purposes.

[*Act of April 26, 1918, ch. —, — Stat. L. —.*]

[Proof and test of ordnance material — increased facilities — acquisition by government — procedure.] That the Secretary of the Navy is hereby authorized to expend the sum of \$1,000,000, or any part thereof, in his discretion, for the purpose of increasing the facilities for the proof and test of ordnance material, including necessary buildings, construction, equipment, railroad, and water facilities, land, and damages and losses to persons, firms, and corporations resulting from the procurement of the land for this purpose, and also all necessary expenses incident to the procurement of said land: *Provided*, That if such lands and appurtenances and improvements attached thereto, can not be procured by purchase within one month after the passage of this Act the President is hereby authorized and empowered to take over for the United States the immediate possession and title of such lands and improvements, including all easements, rights of way, riparian, and other rights appurtenant thereto, or any land selected by him to be used for the carrying out of the purposes of this Act. That if said land and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled

to sue the United States to recover such further sum, as, added to the said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. Upon the taking over of said property by the President as aforesaid, the title to all such property so taken over shall immediately vest in the United States. For the purposes of this Act there is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated the sum of \$1,000,000, or so much thereof as may be necessary: *Provided*, That no railroad shall be built in the District of Columbia under this Act, until Congress has approved the point from which such road may start and also the route to be followed in the District of Columbia. [— *Stat. L.* —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[*Act of July 1, 1918, ch. —, — Stat. L. —.*]

[Leases of water-front property from state or municipality — title to improvements thereon.] * * * The Secretary of the Navy is authorized in leasing water-front property from any State or municipality where the State law or charter of the municipality requires that the improvements placed upon leased lands shall at the termination of the lease become the property of the State or municipality, to provide, as a part or all of the consideration therefor, that improvements placed thereon by the United States shall become the property of the lessor upon the expiration of the lease or any renewal thereof. [— *Stat. L.* —.]

[Active list of navy — enlisted strength — increase.] * * * That the authorized enlisted strength of the active list of the Navy is hereby increased from eighty-seven thousand to one hundred and thirty-one thousand four hundred and eighty-five. [— *Stat. L.* —.]

[Pay and allowances of officers — chief of naval operations — Admiral and Vice Admiral — chief of bureaus — Judge Advocate General.] That hereafter the Chief of Naval Operations shall receive the allowances which are now or may hereafter be prescribed by or in pursuance of law for the grade of general in the Army, and the officers of the Navy holding the rank and title of Admiral and Vice Admiral in the Navy while holding such rank and title shall receive the allowances of a General and Lieutenant General of the Army, respectively. And hereafter chiefs of bureaus of the Navy Department, including the Judge Advocate General of the Navy, shall, while so serving, have corresponding rank and shall receive the same pay and allowances as are now or may hereafter be prescribed by or in pursuance of law for chiefs of bureaus of the War Department and the Judge Advocate General of the Army. [— *Stat. L.* —.]

[Amendments as reducing pay and allowances of officers and enlisted men.] That nothing contained in the preceding amendments of the Act of May twenty-second, nineteen hundred and seventeen, shall be construed to reduce the pay or allowances now authorized by law for any commissioned, warrant, or appointed officer or any enlisted man of the active or retired lists of the Navy. [*— Stat. L. —.*]

The amendments of the Act of May 22, 1917, ch. —, are incorporated therein, *supra*, p. 523, and *infra*, p. 568.

[Retired officers —war or national emergency — active duty — promotion — pay and allowances.] That hereafter, during the existence of war or of a national emergency declared by the President to exist, any commissioned or warrant officer of the Navy, Marine Corps, or Coast Guard of the United States on the retired list may, in the discretion of the Secretary of the Navy, be ordered to active duty at sea or on shore; and any retired officer performing such active duty in time of war or national emergency, declared as aforesaid, shall be entitled to promotion on the retired list to the grade or rank, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, and shall thereafter receive the pay and allowances thereof, which his total active service as an officer both prior and subsequent to retirement, in the manner rendered by him, would have enabled him to attain in due course of promotion had such service been rendered continuously on the active list during the period of time last past.

That during the existence of war or of a national emergency, declared as aforesaid, any commissioned or warrant officer of the Navy, Marine Corps or Coast Guard of the United States on the retired list, while on active duty, may be temporarily advanced to and commissioned in such higher grade or rank on the retired list, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, as the President may determine, and any officer so advanced shall, while on active duty, be entitled to the same pay and allowances as officers of like grade or rank on the active list: *Provided*, That any such commissioned or warrant officer who has been so temporarily advanced in grade or rank shall, upon his relief from active duty, or in any case not later than six months after the termination of the war or of the national emergency, declared as aforesaid, revert to the grade or rank on the retired list and to the pay and allowance status which he would have held had he not been so temporarily advanced: *Provided further*, That nothing in this Act shall operate to reduce the pay and allowances now allowed by law to retired officers. [*— Stat. L. —.*]

[Promotions by selection — advancement to ranks of commander, captain and rear admiral.] The provisions of existing laws with reference to promotion by selection in the line of the Navy are hereby extended to include and authorize advancement to the ranks of commander, captain, and rear admiral in the Staff Corps of the Navy under the same conditions in all respects except as may be necessary to adapt the said provisions to such Staff Corps: *Provided*, That boards of selection shall in each case be composed, when practicable, of not less than five members of the corps

concerned and promotions shall be made on the basis of fitness alone by selection from among the officers of the rank next below: *Provided further*, That the requirements for sea service in grade, length of service in grade and maximum age in grade for promotion shall not apply. [— *Stat. L. —*.]

[**Allowances — increase — performance of aviation duty.**] That hereafter the allowances of officers, enlisted men, and student flyers of the naval service shall in no case be increased by reason of the performance of aviation duty. [— *Stat. L. —*]

[**Assignment of quarters or commutation — authority of Secretary of Navy.**] * * * That hereafter the Secretary of the Navy may determine where and when there are no public quarters available for persons in the Navy and Marine Corps, or serving therewith, within the meaning of any Acts or parts of Acts relating to the assignment of quarters or commutation therefor. [— *Stat. L. —*.]

[**Civilian employees — cash rewards for suggestion.**] That the Secretary of the Navy is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to pay cash rewards to civilian employees of the Navy Department or the Naval Establishment or other persons in civil life when due to a suggestion or series of suggestions by them there results an improvement or economy in manufacturing process or plant or naval material: *Provided*, That such sums as may be awarded to employees or other persons in civil life in accordance with this Act shall be paid them out of current naval appropriations in addition to their usual compensation: *Provided further*, That no employee or other person in civil life shall be paid a reward under this Act until he has properly executed an agreement to the effect that the use by the United States of the suggestion or series of suggestions made by him shall not form the basis of a further claim of any nature from the United States by him, his heirs, or assigns. [— *Stat. L. —*.]

[**Enlisted men on retired list — active service — promotions — pay and benefits.**] * * * That any enlisted man of the Navy or Marine Corps upon the retired list who has been ordered into active service since April sixth, nineteen hundred and seventeen, or who may hereafter be ordered into active service, shall be eligible for promotion and he shall be entitled to the pay and benefits of continuous service of such rank and for such length of time as he is or has been employed in active service, and when relieved of active service shall retain upon the retired list the rank and service held by him at the time of such relief, with the pay and allowances of such rank on the retired list; and the accounting officers of the Treasury are hereby directed to allow in the accounts of any enlisted man of the Navy or Marine Corps who resigned from the retired list in order to reenlist for appointment in a higher grade, the same continuous service pay and the benefits of such rank to which he may have been appointed upon reenlistment, as if his service had been continuous, and any difference in pay from the date of reenlistment shall be credited to his account. [— *Stat. L. —*]

(a) [**Production of ships or war material for navy—power of precedent affecting—words in statute defined.**] * * * That the word “person” as used in paragraph (b), (c), next hereafter shall include any individual, trustee, firm, association, company, or corporation. The word “ship” shall include any boat, vessel, submarine, or any form of aircraft, and the parts thereof. The words “war material” shall include arms, armament, ammunition, stores, supplies and equipment for ships and airplanes, and everything required for or in connection with the production thereof. The word “factory” shall include any factory, workshop, engine works, building used for manufacture, assembling, construction, or any process, and any shipyard or dockyard. The words “United States” shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States. [*—Stat. L.—*]

(b) [**Contracts for ships or war material—precedence—cancellation—commandeering factories or output of factories.**] The President is hereby authorized and empowered, within the limits of the amounts appropriated therefor:

First. To place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give to the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships or war materials so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Second. Within the limit of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified, the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and within the limit of the amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof, without taking possession of the entire factory, whether the United States has or has not any contract with the owner or occupier of such factory.

That all authority granted to the President herein or by him delegated shall cease six months after a final treaty of peace shall be proclaimed between this Government and the German Empire. [— *Stat. L.* —.]

(d) [**Compensation where contracts cancelled or factories or output commandeered.**] That whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

[**Ordnance material — available for issue under what appropriation.**] * * * That ordnance materials procured under the various Ordnance appropriations shall hereafter be available for issue, to meet the general needs of the naval service, under the appropriation from which procured. [— *Stat. L.* —.]

[**Bureau of supplies — transportation of fuel.**] * * * That when, in the opinion of the President, the prices asked for the charter of vessels for the transportation of fuel are excessive, he is authorized to purchase vessels suitable for the purpose, and, if money is not otherwise available, to pay for them from the appropriation "Fuel and transportation." [— *Stat. L.* —.]

[**Ordnance material — transfer to War Department.**] * * * Such naval ordnance and ordnance material as the Secretary of War and the Secretary of the Navy may determine necessary is authorized to be transferred from the Navy Department to the War Department: *Provided*, That if such ordnance and ordnance material is obsolete for naval purposes the transfer shall be made without reimbursement and payment to the Navy for other ordnance and ordnance material transferred hereunder shall be made only after estimates shall have been submitted to Congress and a specific appropriation for such payment shall have been made. [— *Stat. L.* —.]

This is from the Fortifications Appropriation Act of July 8, 1918, ch. —,

II. NAVAL FLYING CORPS

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[*Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 556.*]

[Naval Flying Corps — composition.] The Naval Flying Corps shall be composed of one hundred and fifty officers and three hundred and fifty enlisted men, detailed, appointed, commissioned, enlisted, and distributed in the various grades, ranks, and ratings of the Navy and Marine Corps as hereafter provided. The said number of officers, student flyers, and enlisted men shall be in addition to the total number of officers and enlisted men which is now or may hereafter be provided by law for the other branches of the naval service. [*39 Stat. L. 582.*]

The foregoing and the following seventeen paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417, cited above.

[Detail of officers — student flyers — pay and allowances.] The number of officers detailed to duty in aircraft involving actual flying in any one year shall be in accordance with the requirements of the Air Service as determined by the Secretary of the Navy: *Provided*, That the officers so detailed from the line of the Navy and from the Marine Corps shall not exceed the total number herein prescribed for the Naval Flying Corps: *Provided further*, That the proportion of line officers of the Navy and of the Marine Corps thus detailed shall be the same as the proportion established for the regular services: *And provided further*, That the student flyers hereinafter provided for shall be in addition to the officers and enlisted men comprising the Naval Flying Corps.

The officers detailed and the enlisted men of the Naval Flying Corps shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy and Marine Corps detailed to duty with aircraft involving actual flying. [*39 Stat. L. 582.*]

[Acting ensigns or second lieutenants — qualifications — detail for flying — promotion — choice of duties.] The Secretary of the Navy is hereby authorized to appoint annually in the line of the Navy and the Marine Corps for a period of two years following the passage of this Act, in order of merit as determined by such competitive examinations as he may prescribe, fifteen acting ensigns or acting second lieutenants for the performance of aeronautic duties only. Persons so appointed must be citizens of the United States, and may be appointed from warrant officers or enlisted men of the naval service or from civil life, and must, at the time of appointment, be not less than eighteen or more than twenty-four years of age: *Provided*, That no person shall be so appointed until he has been found physically qualified by a board of medical officers of the Navy for the performance of the duties required: *Provided further*, That the number of such appointments to the line of the Navy and of the Marine Corps shall be in the proportion decided for the regular services. Such appoint-

ments shall be for a probationary period of three years and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns and acting second lieutenants shall be detailed to duty in the Naval Flying Corps in aircraft involving actual flying.

Such acting ensigns of the Navy and acting second lieutenants of the Marine Corps shall, upon completion of the probationary period of three years, be appointed acting lieutenants of the junior grade, or acting first lieutenants, respectively, by the Secretary of the Navy for the performance of aeronautic duties only, after satisfactorily passing such examinations as he may prescribe, and after having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy. Such appointments shall be for a probationary period of four years and may be revoked at any time by the Secretary of the Navy.

Such acting lieutenants (junior grade) and acting first lieutenants may elect to qualify for aeronautic duty only or to qualify for all the duties of officers of the same grade in the Navy and in the Marine Corps, respectively. Those officers who elect to qualify for aeronautic duty only shall be detailed to duty in the Naval Flying Corps involving actual flying in aircraft. Those officers who elect to qualify for the regular duties of their grade shall be detailed to duty in the regular service for at least two years to allow them to prepare for such qualification. [39 Stat. L. 583.]

[Commissions for aeronautic duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for aeronautic duty only shall, upon completion of the probationary period of four years, be commissioned in the grade of lieutenant of the line of the Navy or captain of the Marine Corps for aeronautic duties only, after satisfactorily passing such competitive examination as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and the order of rank in which they shall be commissioned. Such lieutenants for aeronautic duty only shall be borne on the list as extra numbers, taking rank with and next after officers of the same date of commission. [39 Stat. L. 583.]

[Commissions for line duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for the regular duties of the line of the Navy and of the Marine Corps, respectively, shall, upon completion of the probationary period of four years, two years of which shall have been on such regular duties, be commissioned in the grade of the line of the Navy or Marine Corps according to his length of service, after passing satisfactorily such competitive examinations as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and to determine the order of rank in which they shall be commissioned. Such officers of the line of the Navy and Marine Corps will be borne upon the lists of their respective corps as extra numbers, taking rank with and next after officers of the regular services of the same date of commissions. [39 Stat. L. 584.]

[Transfers to Reserve Flying Corps — discharge.] Acting lieutenants (junior grade) of the line of the Navy for aeronautic duties only and act-

ing first lieutenants of the Marine Corps for aeronautic duty only who have completed the probationary period of four years may, upon examination for commissions to the next higher grade, if recommended by the board of examination, be transferred to the Naval Reserve Flying Corps and commissioned in the same grade or the next higher grade as may be recommended in accordance with their qualifications as determined by the examination: *Provided*, That at any time during such probationary period any such officer can, upon his own request, if his record warrants it, be transferred to the Naval Reserve Flying Corps and commissioned in the acting grade he then holds. Any officer of the Naval Flying Corps holding an appointment of student flyer or acting ensign, second lieutenant, lieutenant (junior grade), or first lieutenant, who, upon examination for promotion, is found not qualified shall, if not recommended by the examining board for transfer to the Naval Reserve Flying Corps, be honorably discharged from the naval service. [39 Stat. L. 584.]

[Promotion of officers for aeronautic duty only.] Officers commissioned for aeronautic duty only shall be eligible for advancement to the higher grades, not above captain in the Navy or colonel in the Marine Corps, in the same manner as other officers whose employment is not so restricted, except that they shall be eligible to promotion without restriction as to sea duty, and their professional examinations shall be restricted to the duty to which personally assigned: *Provided*, That any such officer must serve at least three years in any grade before being eligible to promotion to the next higher grade. [39 Stat. L. 584.]

[Detail from other branches as student aviators or airmen — pay and allowances.] Nothing in this Act shall be so construed as to prevent the detail of officers and enlisted men of other branches of the Navy as student aviators or student airmen in such numbers as the needs of the service may require.

Such officers and enlisted men, while detailed as student aviators and student airmen involving actually flying in aircraft, shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy detailed for duty with aircraft. [39 Stat. L. 584.]

[Student flyers from enlisted men or civil life — pay and allowances — term of appointment — revocation or transfer.] The Secretary of the Navy is hereby authorized to appoint annually for a period of four years, from enlisted men of the naval service, or from citizens of the United States in civil life, not to exceed thirty student flyers for instruction and training in aeronautics who shall receive the same pay and allowances as midshipmen at the United States Naval Academy: *Provided*, That persons so appointed must, at the time of appointment, be not less than seventeen or more than twenty-one years of age: *Provided further*, That no person shall be appointed a student flyer until he shall have qualified therefor by such examination as may be prescribed by the Secretary of the Navy.

The appointment of student flyers shall continue in force for two years, unless sooner revoked by the Secretary of the Navy, in his discretion, and

at the end of such period student flyers shall be examined for qualification as qualified aviators: *Provided*, That if such student flyers are not qualified, their appointment will be revoked, or, if recommended by the examining board, they shall be transferred to the Naval Reserve Flying Corps and commissioned as ensigns therein. [39 Stat. L. 584.]

[Qualified aviators — rank and pay — promotion — transfer.] Student flyers shall, after receiving a certificate of qualification as an aviator for actual flying in aircraft, rank with midshipmen and shall receive the same pay and allowances as midshipmen, plus fifty per centum thereof: *Provided*, That student flyers who have qualified as aviators under the provisions of this Act shall be commissioned acting ensigns for aeronautic duties only, after three years' service: *Provided further*, That they shall have been examined by a board of officers of the Naval Flying Corps to determine by a competitive examination prescribed by the Secretary of the Navy their moral, physical, and professional fitness and the order of rank in which they shall be commissioned: *And provided further*, That any student flyer qualified as an aviator may at any time, in the discretion of the Secretary of the Navy, if his record warrants it, at his own request, be transferred to the Naval Reserve Flying Corps and be commissioned as ensign therein: *And provided further*, That student flyers not considered qualified for commission as acting ensigns for aeronautic duties only may, upon recommendation of the examining board, be transferred to the Naval Reserve Flying Corps and be commissioned as ensigns therein. [39 Stat. L. 585.]

[Aeronautic training schools authorized.] The Secretary of the Navy is hereby authorized to establish aeronautic schools for the instruction and training of student flyers and prescribe the course of instruction and qualifications for certificate of graduation as a qualified aviator. [39 Stat. L. 585.]

[Temporary detail for aircraft duty.] Nothing in this or any other Act shall be so construed as to prevent the temporary detail of officers and enlisted men of any branch of the Navy for duty with aircraft. [39 Stat. L. 585.]

[Aviation accidents — gratuity for death from — pensions for death or disability.] In the event of the death of an officer or enlisted man or student flyer of the Naval Flying Corps from wounds or disease, the result of an aviation accident, not the result of his own misconduct, received while engaged in actual flying in or in handling aircraft, the gratuity to be paid under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," shall be an amount equal to one year's pay at the rate received by such officer or enlisted man or student flyer at the time of the accident resulting in his death. In all cases where an officer or enlisted man or student flyer of the Navy or Marine Corps dies, or where a student flyer or an enlisted man of the Navy or

Marine Corps is disabled by reason of any injury received or disease contracted in line of duty, the result of an aviation accident, received while employed in actual flying in or in handling aircraft, the amount of pension allowed shall be double that authorized to be paid should death or the disability have occurred by reason of an injury received or disease contracted in line of duty not the result of an aviation accident. [39 Stat. L. 585.]

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290. Said Act was an amendment of the Act of May 13, 1908, ch. 166. See 6 Fed. Stat. Ann. (2d ed.) 1210.

[Application of Navy laws, etc.—retirement or retired pay.] Student flyers and the acting ensigns and acting lieutenants (junior grade) and acting second and first lieutenants for aeronautic duties only provided for herein shall be subject to the laws and regulations and orders for the government of the Navy, but shall not be entitled to retirement or retired pay. [39 Stat. L. 585.]

[Ratings of enlisted men.] The enlisted personnel of the Naval Flying Corps shall be distributed by the Secretary of the Navy in the various ratings as now obtained in the Navy in so far as such ratings are applicable to duties connected with aircraft. [39 Stat. L. 585.]

[Transfer of enlisted men.] Within the first two years after the approval of this Act enlisted men may be transferred from other branches of the Naval Service to the Naval Flying Corps, under regulations established by the Secretary of the Navy governing such transfer and the qualifications for this corps: *Provided*, That the number so transferred shall not exceed one-half the total number of enlisted men allowed by this Act. [39 Stat. L. 586.]

[Regulations.] The Secretary of the Navy shall establish regulations governing the term of enlistment, the qualifications, and advancement of the enlisted men of the Flying Corps. [39 Stat. L. 586.]

[Appointment of enlisted men as student flyers.] Any enlisted man who passes satisfactorily the prescribed examination and is recommended by a board of officers may be appointed a student flyer as herein provided. [39 Stat. L. 586.]

III. NAVAL RESERVE

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 556.]

NAVAL RESERVE FORCE.

[Creation of Naval Reserve Force — classes — composition — aliens — naturalization.] There is hereby established, under the Department of

the Navy, a Naval Reserve Force, to consist of six classes, designated as follows and as hereinafter described:

First. The Fleet Naval Reserve.

Second. The Naval Reserve.

Third. The Naval Auxiliary Reserve.

Fourth. The Naval Coast Defense Reserve.

Fifth. The Volunteer Naval Reserve.

Sixth. Naval Reserve Flying Corps.

The Naval Reserve Force shall be composed of citizens of the United States who, by enrolling under regulations prescribed by the Secretary of the Navy or by transfer thereto as in this Act provided, obligate themselves to serve in the Navy in time of war or during the existence of a national emergency, declared by the President: *Provided*, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve: *Provided further*, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. [39 Stat. L. 587 as amended by — Stat. L. —.]

The foregoing paragraph and the following nineteen paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417, cited above.

This paragraph was amended to read as here given by the Act of May 22, 1917, ch. —, the amendment consisting of the addition of the second proviso beginning with the words "*Provided further*" to the end of the text.

[Regulations.] The Secretary of the Navy shall make all necessary and proper regulations not inconsistent with law for the administration of the provisions of this Act which relate to the Naval Reserve Force. [39 Stat. L. 587.]

[Order for active service.] Members of the Naval Reserve Force may be ordered into active service in the Navy by the President in time of war or when, in his opinion, a national emergency exists. [39 Stat. L. 587.]

[Ranks, grades, etc.] There shall be allowed in the Naval Reserve Force the various ratings, grades, and ranks, not above the rank of lieutenant commander, corresponding to those in the Navy. Officers of the line may be appointed for deck or engineering duties, as they may elect. [39 Stat. L. 587.]

[Commissions — warrants — retainer pay, etc.—rank of officers.] Members of the Naval Reserve Force appointed to commissioned grades shall be commissioned by the President alone, and members of such force

appointed to warrant grades shall be warranted by the Secretary of the Navy: *Provided*, That officers so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would otherwise be entitled. Officers of the Naval Reserve Force shall rank with but after officers of corresponding rank in the Navy. [39 Stat. L. 587.]

[Term of service — oath of allegiance.] Enrollment and reenrollment shall be for terms of four years, but members shall in time of peace, when no national emergency exists, be discharged upon their own request upon reimbursing the Government for any clothing gratuity that may have been furnished them during their current enrollment.

Persons enrolling shall be required to take the oath of allegiance to the United States. [39 Stat. L. 587.]

[Provisional grade, etc. — instruction service — confirmation of grade.] When first enrolled members of the Naval Reserve Force, except those in the Fleet Naval Reserve, shall be given a provisional grade, rank or rating in accordance with their qualifications determined by examination. They may thereafter, upon application, be assigned to active service in the Navy for such periods of instruction and training as may enable them to qualify for and be confirmed in such grade, rank or rating.

No member shall be confirmed in his provisional grade, rank or rating until he shall have performed the minimum amount of active service required for the class in which he is enrolled, nor until he has duly qualified by examination for such rank or rating under regulations prescribed by the Secretary of the Navy. [39 Stat. L. 587.]

[Examinations, etc., of officers.] No person shall be appointed or commissioned as an officer in any rank in any class of the Naval Reserve Force, or promoted to a higher rank therein, unless he shall have been examined and recommended for such appointment, commission, or promotion by a board of three naval officers not below the rank of lieutenant commander, nor until he shall have been found physically qualified by a board of medical officers to perform the duties required in time of war, except that former officers and midshipmen of the Navy, who shall have left the service under honorable conditions and who shall have enrolled in the Naval Reserve Force, may be appointed in the grade and rank last held by them without examination other than the physical examination above prescribed. [39 Stat. L. 587.]

[Retainer pay.] The retainer pay of all members of the Naval Reserve Force, except the Volunteer Naval Reserve, while enrolled in a provisional rank or rating, and until such time as they shall have been confirmed in such rank or rating, shall be \$12 per annum. Thereafter, the retainer pay shall be that prescribed for members in the various classes.

Retainer pay shall be in addition to any pay to which a member may be entitled by reason of active service.

Retainer pay shall only be paid to members of the Naval Reserve Force upon their making such reports concerning their movements and occupations as may be required by the Secretary of the Navy. [39 Stat. L. 588.]

[Reenrollment — increased pay — retirement — cash gratuity.] Members of the Naval Reserve Force who reenroll for a term of four years within four months from the date of the termination of their last term of enrollment, and who shall have performed the minimum amount of active service required during the preceding term of enrollment, shall, for each such reenrollment, receive an increase of twenty-five per centum of their base retainer pay: *Provided*, That enrolled members who shall have completed twenty years of service in the Naval Reserve Force, and who shall have performed the minimum amount of active service required in their class for maintaining efficiency during each term of enrollment, shall, upon their own application, be retired with the rank or rating held by them at the time, and shall receive in lieu of any pay, a cash gratuity equal to the total amount of their retainer pay during the last term of their enrollment. [39 Stat. L. 588.]

[Payment of retainer pay.] Retainer pay shall be paid annually or at shorter intervals, as the Secretary of the Navy, in his discretion, may direct. [39 Stat. L. 588.]

[Other public service.] No existing law shall be construed to prevent any member of the Naval Reserve Force from accepting employment in any branch of the public service, except as an officer or enlisted man in any branch of the military service of the United States or any State thereof, nor from receiving the pay and allowances incident to such employment in addition to his retainer pay. [39 Stat. L. 588.]

[Application of Navy laws — badge or button — unauthorized use.] Enrolled members of the Naval Reserve Force shall be subject to the laws, regulations, and orders for the government of the Regular Navy only during such time as they may by law be required to serve in the Navy, in accordance with their obligations, and when on active service at their own request as herein provided, and when employed in authorized travel to and from such active service in the Navy. Members of the Naval Reserve Force shall be issued a distinctive badge or button which may be worn with civilian dress, and whoever, not being a member of the Naval Reserve Force of the United States and not entitled under the law to wear the same, willfully wears or uses the badge or button or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than \$20 or by imprisonment for not more than thirty days or by both such fine and imprisonment. [39 Stat. L. 588.]

[Active service — pay — not in active service.] All members of the Naval Reserve Force shall, when actively employed as set forth in this Act, be entitled to the same pay, allowances, gratuities, and other emoluments as officers and enlisted men of the naval service on active duty of corresponding rank or rating and of the same length of service. When not actively employed in the Navy, members of the Naval Reserve Force shall not be entitled to any pay, bounty, gratuity, or pension except as expressly provided for members of the Naval Reserve Force by the provisions of this Act. [39 Stat. L. 588.]

[Service in time of war.] Enrolled members of the Naval Reserve Force may, in time of war or national emergency, be required to perform active service in the Navy throughout the war or until the national emergency ceases to exist. [39 Stat. L. 588.]

[Uniform gratuity for training — for service in time of war — deduction on withdrawal.] Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of \$50 for officers and of \$30 for men.

Upon reporting for active service in time of war or national emergency the uniform gratuity shall be \$150 for officers and \$60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him. [39 Stat. L. 589.]

[Auxiliary vessels — preference to Reserve Force.] Hereafter, in shipping officers and men for service on board United States auxiliary vessels, preference shall be given to members of the Naval Reserve Force, and, after two years from the date of approval of this Act, no person shall be shipped for such service who is not a member of the Naval Reserve Force herein provided. [39 Stat. L. 589.]

[Transfer of members to other classes.] Members of the Naval Reserve Force may, upon application, be transferred from one class to another class for which qualified under the provisions of this Act; and may in time of war volunteer for and be assigned to duties prescribed for any class which they may be deemed competent to perform. [39 Stat. L. 589.]

[Flag or pennant.] The Secretary of the Navy shall prescribe a suitable flag, or pennant, that may be flown as an insignia on private vessels or vessels of the merchant service commanded by officers of the Naval Reserve Force: *Provided*, That it shall not be flown in lieu of the National ensign. [39 Stat. L. 589.]

[Schools for instruction — admissions — certificates on completing course.] * * * The Secretary of the Navy is hereby authorized to establish schools or camps of instruction at such times and in such localities as he may deem advisable for the purpose of instructing members and applicants for membership in the Naval Reserve Force. No applicant shall be accepted for instruction unless he agrees to abide by the regulations of the school and pursue the course prescribed by the Secretary of the Navy. Persons who satisfactorily complete the course will be given certificates of qualification for the rank or rating for which duly qualified, and may be permitted to enroll in the proper class of the reserve in such rank or rating. For the purpose of carrying into effect this paragraph of the Act there is

hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$30,000, which is hereby made available to be expended as the Secretary of the Navy may direct in the necessary equipment and maintenance of such schools and camps. [39 Stat. L. 589.]

[Qualifications for enlistment in.] Members of the Naval Reserve Force who have enrolled for general service and are citizens of the United States are eligible for membership in the Naval Reserve. No person shall be enrolled in or transferred to this class unless he establishes satisfactory evidence as to his qualifications for duty on board combatant ships of the Navy. [39 Stat. L. 591 as amended by — Stat. L. —.]

This paragraph was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

“Members of the Naval Reserve Force who have been or may be engaged in the seagoing profession, and who have enrolled for general service, shall be eligible for membership in the Naval Reserve. No person shall be first enrolled in this class who is less than eighteen or more than thirty-five years of age, nor unless he furnishes satisfactory evidence as to his ability and character; nor shall any person be appointed an officer in this class unless he shall have had not less than two years’ experience as an officer on board of lake or ocean going vessels.”

[Service for rank — service during term.] The minimum active service required of members to qualify for confirmation in their rank or rating in this class shall be three months.

The minimum active service required for maintaining the efficiency of a member of this class is three months during each term of enrollment. This active service may be in one period or in periods of not less than three weeks each year. [39 Stat. L. 591.]

[United States Naval Reserve — continuous service pay — reenlistments — back pay or allowances.] * * * Any former member of class one of the United States Naval Reserve, established by the Act of March third, nineteen hundred and fifteen, “An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes,” who shall have reenlisted in the Navy prior to May first, nineteen hundred and seventeen, shall be held and considered to have reenlisted within four months from the date of discharge from the Navy for the purpose of continuous-service pay. And any such member of the said Naval Reserve who was serving therein on August twenty-ninth, nineteen hundred and sixteen, shall upon his application therefor, any time prior to July first, nineteen hundred and seventeen, be enrolled in the Naval Reserve Force, and any such person so enrolled shall, for all purposes, be considered as having served continuously in such Naval Reserve Force since August twenty-ninth, nineteen hundred and sixteen, with due credit for previous and continuous service in the Naval Reserve in the same manner and to the same effect as for equal length of service in the Naval Reserve Force: *Provided*, That no such enrolled person shall receive any back pay or allowances for any period during which he shall have received pay or allowances, or either, for service

in any other branch of the naval service, regular or reserve. [39 Stat. L. 1174.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the Act of March 3, 1915, ch. 83, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 175; 6 Fed. Stat. Ann. (2d ed.) 1234.

An Act To increase the age limit for persons appointed as officers in the Naval Reserve.

[Act of April 25, 1917, ch. —, — Stat. L. —.]

[Naval Reserve Force — officers — age limit.] That the maximum limit of age for officers of the Naval Reserve of the Naval Reserve Force on first appointment as such therein be, and it is hereby increased from thirty-five to fifty years. [— Stat. L. —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[Act of July 1, 1918, ch. —, — Stat. L. —.]

[Naval Militia — National Naval Volunteers — transfer to Naval Reserve Force or Marine Corps Reserve.] * * * That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— Stat. L. —.]

For provisions relating to the Naval Militia and the National Naval Volunteers, see MILITIA.

[Medical and Dental Reserve Corps — enrollment of members in Naval Reserve Force.] * * * That all laws heretofore enacted by Congress

relating to the Medical Reserve Corps, and Dental Reserve Corps be, and the same hereby are repealed: *Provided*, That members of the Medical Reserve Corps and Dental Reserve Corps may be enrolled in the Naval Reserve Force in their present grades and ranks. [— *Stat. L.* —.]

The Medical Reserve Corps was authorized by the Act of Aug. 22, 1912, ch. 335. See 6 Fed. Stat. Ann. (2d ed.) 1101.

The Dental Reserve Corps was authorized by the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 574, as follows:

"That a Navy Dental Reserve Corps is hereby authorized to be organized and operated under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, providing for the organization and operation of a Navy Medical Reserve Corps, and differing therefrom in no respect other than that the qualification requirements of the appointees shall be dental surgeons and graduates of reputable schools of medicine or dentistry instead of "reputable schools of medicine," and so many said appointees may be ordered to temporary active service as the Secretary of the Navy may deem necessary to the health and efficiency of the personnel of the Navy and Marine Corps, provided the whole number of both Naval Dental Corps and Naval Dental Reserve Corps officers in active service shall not exceed in time of peace one to one thousand of the officers and enlisted men of the Navy and Marine Corps: *Provided*, That all officers now in the Navy Dental Reserve Corps shall be recommissioned in the Navy Dental Reserve Corps provided in this Act, in the order of their original appointment in said Corps, and hereafter when ordered to active duty officers of the Medical Reserve Corps and officers of the Dental Reserve Corps shall receive promotion in rank in the respective Reserve Corps under the same relative conditions and provisions of active service as is provided in this Act for the Naval Dental Corps."

[**Ranks, grades and ratings — age limits.**] That the age limits for the several ranks, grades, and ratings on first enrollment in the Naval Reserve shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[**Minimum active service required.**] That the minimum active service required for maintaining the efficiency of a member of the Naval Reserve shall be two months during each term of enrollment and an attendance at not less than thirty-six drills during each year, or other equivalent duty. The active service may be in one period or in periods of not less than fifteen days each. [— *Stat. L.* —.]

[**Annual retainer pay — continuous service — retirement.**] That the annual retainer pay of members of the Naval Reserve Force, except officers in the Naval Auxiliary Reserve and transferred members of the Fleet Naval Reserve, after confirmation in rank, grade, or rating, shall be the equivalent of two months' base pay of the corresponding rank, grade, or rating in the Navy, but the highest base pay upon which the retainer pay of officers of the Naval Reserve Force shall be computed, shall not be greater than the base pay of a lieutenant commander. Service in the Navy, Marine Corps, National Naval Volunteers, and Naval Militia shall be counted as continuous service in the Naval Reserve Force, both for the purpose of retirement and of computing retainer pay: *Provided*, That no member of the Naval Reserve Force shall be eligible for retirement other than for physical disability incurred in line of duty: *Provided further*, That no retainer pay of any member of the Naval Reserve Force except those enlisted men transferred to the Fleet Naval Reserve after sixteen or twenty or more years' naval service shall be in excess of the amount authorized to

members having had sixteen years' continuous service therein. [— *Stat. L. —*.]

The Army Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 591, provided as follows:

"The annual retainer pay of members in this class after confirmation in rank or rating shall be two months' base pay of the corresponding rank or rating in the Navy."

[Performance of duty afloat by members.] That in time of peace the Secretary of the Navy is authorized, in his discretion, to order any member of the Naval Reserve Force, with his consent, who has been confirmed in his rank, grade, or rating, to perform any duty afloat for any period of time for which his services may be required: *Provided*, That such members may be relieved from duty by the Secretary of the Navy at any time and shall upon their own application be released from said duty within four months from the date of their application therefor. [— *Stat. L. —*.]

[Clothing — gratuity — issuance.] That the uniform gratuity for the members, other than officers, of each class of the Naval Reserve Force shall be the same as that prescribed for enlisted men of the Navy, but in time of peace the Secretary of the Navy shall prescribe the portion of the clothing gratuity to be issued to such members, other than officers, of the Naval Reserve Force. [— *Stat. L. —*.]

[Retainer pay in time of peace.] That in time of peace no member of any class of the Naval Reserve Force shall be entitled to retainer pay when assigned to active duty for purposes other than training. [— *Stat. L. —*.]

[Clothing gratuity to members — deduction from their accounts.] That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency. [— *Stat. L. —*.]

[Disenrollment of members on account of age.] That members of the Naval Reserve Force shall upon reaching the age of sixty-four years be disenrolled except that in time of war or other national emergency such members of the Naval Reserve Force, if in active service, may be continued therein during such period as the Secretary of the Navy may determine, but not longer than six months after said war or other national emergency shall cease to exist. [— *Stat. L. —*.]

[Officers — promotions.] That no officer of any class of the Naval Reserve Force shall in time of peace be promoted above the grade of lieutenant commander, but in time of war or other national emergency officers of the Naval Reserve Force of and above the rank of lieutenant commander in active service shall be eligible for selection for promotion to the next higher grade or rank by the same board of officers that selects officers of the United States Navy for promotion to such higher ranks and grades, under the same rules and regulations as apply to the selection for promotion of officers of the United States Navy. The promotion of officers

of the Naval Reserve Force below the rank of lieutenant commander shall at all times be in accordance with such regulations as the Secretary of the Navy may prescribe. [— *Stat. L.* —.]

[Officers — precedence.] That when on active duty officers of the Naval Reserve Force shall take precedence among themselves and with other officers of the naval service in their respective grades or ranks according to the dates of their commissions or provisional assignment of rank in the Naval Reserve Force: *Provided*, That all officers of the Naval Reserve Force of and above the rank of lieutenant commander shall rank with but after officers of the same rank or grade in the United States Navy, except that in time of war or other national emergency such officers of the Naval Reserve Force shall have a date of precedence with officers of the United States Navy as of the date of general mobilization, to be established by the Secretary of the Navy: *Provided further*, That during the present emergency the date of precedence of all officers of the Naval Reserve Force shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[Pay and allowances — active service.] Members of the Naval Reserve Force when employed in active service, ashore or afloat, under the Navy Department shall receive the same pay and allowances as received by the officers and enlisted men of the Regular Navy of the same rank, grades, or ratings and of the same length of service, which shall include service in the Navy, Marine Corps, Naval Reserve Force, Naval Militia, National Naval Volunteers, or Marine Corps Reserve. [— *Stat. L.* —.]

[Laws, regulations and orders — wearing uniforms.] * * * Enrolled members of the Naval Reserve Force when in active service shall be subject to the laws, regulations, and orders for the government of the Regular Navy, and the Secretary of the Navy may, in his discretion, permit the members of the Naval Reserve Force to wear the uniform of their respective ranks, grades, or ratings while not in active service, and such members shall, for any act committed by them while wearing the uniform of their respective ranks, grades, or ratings, be subject to the laws, regulations, and orders for the government of the Regular Navy. [— *Stat. L.* —.]

IV. FLEET NAVAL RESERVE

[Fleet Naval Reserve — persons eligible for membership.] All former officers of the United States naval service, including midshipmen, who have left that service under honorable conditions, and those citizens of the United States who have been, or may be entitled to be, honorably discharged from the naval service after not less than one four-year term of enlistment or after a term of enlistment during minority, and who shall have enrolled in the Naval Reserve Force shall be eligible for membership in the Fleet Naval Reserve. [39 *Stat. L.* 589.]

The foregoing and the following nine paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Transfer of enlisted men.] In addition to the enrollments in the Fleet Naval Reserve above provided, the Secretary of the Navy is authorized to transfer to the Fleet Naval Reserve at any time within his discretion any enlisted man of the naval service with twenty or more years' naval service, and any enlisted man, at the expiration of a term of enlistment who may be then entitled to an honorable discharge, after sixteen years' naval service: *Provided*, That such transfers shall only be made upon voluntary application and in the rating in which then serving, and the men so transferred shall be continued in the Fleet Naval Reserve until discharged by competent authority. [39 Stat. L. 589.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Assignment to active duty for training—travel allowance.] The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training upon the application of such member, but any member who has failed to perform three months' active service with the Navy in any term of enrollment shall, on the next reenrollment, receive retainer pay at the rate of \$12 per annum until such time as he shall have completed three months' active service. The three months' active service with the Navy may be taken in one or more periods, at the election of the member: *Provided*, That no member shall be entitled to travel allowance unless the period of such active service is for not less than one month, or unless specifically provided for by such regulations as may be prescribed by the Secretary of the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

As originally enacted the first clause of the first sentence of this paragraph was as follows: "The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training on board ship, upon the application of such member." This clause was amended by the Act of April 15, 1917, ch. —, by striking therefrom the words "on board ship," causing it to read as here given.

[Retainer pay—enlistment period.] The retainer pay of the enrolled men of the Fleet Naval Reserve shall be the same as for the enrolled men of the Naval Reserve and shall be computed in like manner: *Provided*, That nothing herein shall operate to reduce the retainer pay allowed by existing law to enlisted men who, after sixteen years' or more naval service, are transferred to the Fleet Naval Reserve, nor to deny to such enlisted men their privilege of retirement upon completing thirty years' naval service as now provided by law: *Provided*, That for all purposes of this Act a complete enlistment during minority and any enlistment terminated within three months prior to the expiration of the term of enlistment by special order of the Secretary of the Navy shall be considered as four years' service. The annual retainer pay of officers of the Fleet Naval Reserve shall be two months' base pay of the corresponding rank in the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

The provisions of this paragraph relating to retainer pay were amended to read as given in the text by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted they were as follows:

"Men enrolled in the Fleet Naval Reserve with less than eight years' naval service shall be paid at the rate of \$50 per annum; those with eight or more years and less

than twelve years' naval service shall be paid at the rate of \$72 per annum; and those with twelve or more years' naval service shall be paid at the rate of \$100 per annum, such pay to be considered as retainer pay for the obligation on the part of such members to serve in the Navy in time of war or national emergency."

[Reenrollments — retainer pay — reenlistment in regular service — retainer pay.] Reenrollments in the Fleet Naval Reserve shall be for four years. Officers and men enrolling in the Fleet Naval Reserve within four months of the date of the termination of their last naval service or reenrolling within four months of the date of the termination of their last term of enrollment shall receive an increase of twenty-five per centum of their retainer pay for each such enrollment: *Provided*, That men who have enrolled in the Fleet Naval Reserve within four months of the date of their discharge from the regular naval service shall, upon reenlistment in the regular naval service within four months of the date of discharge from the Fleet Naval Reserve, be entitled to the same gratuity and additional pay as if they had reenlisted in the regular naval service within four months of discharge therefrom. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Longevity increase of retainer pay — heroism or good conduct — credit.] Members of the Fleet Naval Reserve who have, when transferred to the Fleet Naval Reserve, completed naval service of sixteen or twenty or more years shall be paid a retainer at the rate of one-third and one-half, respectively, of the base pay they were receiving at the close of their last naval service plus all permanent additions thereto: *Provided*, That the pay authorized in this paragraph as a retainer shall be increased ten per centum for all men who may be credited with extraordinary heroism in the line of duty or whose average marks in conduct for twenty years or more shall not be less than ninety-five per centum of the maximum. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Forfeiture of pay.] Any pay which may be due any member of the Fleet Naval Reserve shall be forfeited when so ordered by the Secretary of the Navy upon the failure, under such conditions as may be prescribed by the Secretary of the Navy, of such man to report for inspection. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Issue of warrants or commissions.] Members of the Fleet Naval Reserve who have established their qualifications by examination to the satisfaction of the Secretary of the Navy may be given warrants or commissions in the Fleet Naval Reserve in the grades of boatswain, gunner, carpenter, machinist, pharmacist, pay clerk, ensign for deck or engineering duties, or in the lowest grades of the staff corps: *Provided further*, That those so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would be otherwise entitled. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Discharges — voluntary retirement.] Men transferred to the Fleet Naval Reserve shall be governed by the laws and regulations for the government of the Navy and shall not be discharged from the Naval Reserve Force without their consent, except by sentence of a court-martial. They may, upon their own request, upon completing thirty years' service, including naval and fleet naval reserve service, be placed on the retired list of the Navy with the pay they were then receiving plus the allowances to which enlisted men of the same rating are entitled on retirement after thirty years' naval service. They shall be required to keep on hand such part of the uniform-clothing outfit as may be prescribed by the Secretary of the Navy. [39 Stat. L. 591.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Active service in time of war.] The Secretary of the Navy is authorized in time of war or when a national emergency exists to call any enlisted man on the retired list into active service for such duty as he may be able to perform. While so employed such enlisted men shall receive the same pay and allowances they were receiving when placed on the retired list. [39 Stat. L. 591.]

See the note to the first paragraph of the text, *supra*, p. 556.

V. NAVAL AUXILIARY RESERVE

[Naval Auxiliary Reserve — eligibility for membership.] Members of the Naval Reserve Force of the seagoing profession who shall have been or may be employed on American vessels of the merchant marine of suitable type for use as naval auxiliaries and which shall have been listed as such by the Navy Department for use in war, shall be eligible for membership in the Naval Auxiliary Reserve. [39 Stat. L. 591.]

This and the four paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Service on vessels of merchant ship type.] In time of war or during the existence of a national emergency, persons in this class shall be required to serve only in vessels of the merchant ship type, except in cases of emergency, to be determined by the senior officer present, when said officer may, in his discretion, detail them for temporary duty elsewhere as the exigencies of the service may require. [39 Stat. L. 591.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Qualifications of officers and men.] The requirement as to qualifications of officers and men for confirmation in rank or rating, and as to the maintenance of efficiency in rank or rating, shall be prescribed by the Secretary of the Navy and shall be limited to the requirements for the proper organization, discipline, maneuvering, navigation, and operation of vessels of the merchant ship type while performing auxiliary service

the fleet in time of war, and length of time of employment on board such vessels in the merchant service. [39 Stat. L. 591.]

See the note to the preceding paragraph of text.

[Command of officers.] Officers in the Naval Auxiliary Reserve shall exercise military command only on board the ships to which they are attached and in the naval auxiliary service. [39 Stat. L. 592.]

See the note to the first paragraph of this Act, *supra*, p. 559.

[Retainer pay.] The annual retainer pay of members in this class after confirmation in rank or rating shall be for officers, one month's base pay of the corresponding rank in the Navy, and for men, two months' base pay of the corresponding rating in the Navy. [39 Stat. L. 592.]

See the note to the first paragraph of this Act, *supra*, p. 559.

VI. NAVAL COAST DEFENSE RESERVE

[Naval Coast Defense Reserve — eligibility for membership.] Members of the Naval Reserve Force who may be capable of performing special useful service in the Navy or in connection with the Navy in defense of the coast, shall be eligible for membership in the Naval Coast Defense Reserve. [39 Stat. L. 592.]

This and the three paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Classes of service to be enrolled for — owners of yachts, boats, etc.— contracts for use of boats, etc.] Persons may enroll in this class for service in connection with the naval defense of the coast, such as service with coast-defense vessels, torpedo craft, mining vessels, patrol vessels or as radio operators, in various ranks or ratings corresponding to those of the Navy for which they shall have qualified under regulations prescribed by the Secretary of the Navy: *Provided*, That the Secretary of the Navy may permit the enrollment in this class of owners and operators of yachts and motor power boats suitable for naval purposes in the naval defense of the coast; and is hereby authorized to enter into contract with the owners of such power boats and other craft suitable for war purposes to take over the same in time of war or national emergency upon payment of a reasonable indemnity. [39 Stat. L. 592.]

See the note to the preceding paragraph of the text.

[Service for rank and rating.] The amount of active service required for confirmation in rank and rating and for maintaining efficiency in rank and rating shall be the same as that required for members of the Naval Reserve. [39 Stat. L. 592.]

See the note to the second preceding paragraph of the text.

[Retainer pay.] The annual retainer pay of members of this class shall be the same as that of members of the Naval Reserve. [39 Stat. L. 592.]

See the note to the third preceding paragraph of the text.

[Officers — exercise of command.] No officer of the Naval Coast Defense Reserve or officer of the Naval Reserve Flying Corps shall exercise command except within his particular department or service for the due performance of his respective duties. [— Stat. L. —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

VII. VOLUNTEER NAVAL RESERVE

[Volunteer Naval Reserve — composition.] The Volunteer Naval Reserve shall be composed of those members of the Naval Reserve Force who are eligible for membership in any one of the other classes of the Naval Reserve Force, and who obligate themselves to serve in the Navy in any one of said classes without retainer pay and uniform gratuity in time of peace. [39 Stat. L. 592.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

VIII. NAVAL RESERVE FLYING CORPS

[Naval Reserve Flying Corps — composition — commissions — services — retainer pay.] The Naval Reserve Flying Corps shall be composed of officers and student flyers who have been transferred from the Naval Flying Corps to the Naval Reserve Flying Corps and of enlisted men who shall have been so transferred under the same conditions as those provided by law for enlisted men of the Navy transferred to the Fleet Naval Reserve: *Provided*, That surplus graduates of the aeronautic school may be commissioned as ensigns in the Naval Reserve Flying Corps and promoted therein under such regulations as may be prescribed by the President. Members of the Naval Reserve Force skilled in the flying of aircraft or in their design, building, or operation, shall be eligible for membership in the Naval Reserve Flying Corps. The amount of active service required for confirmation in grade, rank, or rating, and for maintaining efficiency therein, shall be the same as that required for members of the Naval Reserve. The retainer pay of members of the Naval Reserve Flying Corps shall be the same as that of members of the Naval Reserve. [39 Stat. L. 592.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Officers — exercise of command.] No officer of the Naval Coast Defense Reserve or officer of the Naval Reserve Flying Corps shall exercise command except within his particular department or service for the due performance of his respective duties. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

IX. MARINE CORPS

SEC. 3. [Marine Corps increase.] That the following increase in the United States Marine Corps be, and the same is hereby, authorized: Two majors, twelve captains, eighteen first lieutenants, two assistant quartermasters with the rank of captain, one assistant paymaster with the rank of captain, five quartermaster sergeants, five first sergeants, five gunnery sergeants, and eleven sergeants. [39 *Stat. L.* 224.]

This is from an Act of June 12, 1916, ch. 140. Sections 1, 2, 4, 5 of this Act are given *supra*, p. 506.

[Commissioned personnel — proportionate distribution — brigadier generals — major general commandant — senior staff officers.] Hereafter the total number of commissioned officers of the active list of the line and staff of the Marine Corps, exclusive of officers borne on the Navy list as additional numbers, shall be four per centum of the total authorized enlisted strength of the active list of the Marine Corps, exclusive of the Marine Band, and of men under sentence of discharge by court-martial, distributed in the proportion of one officer with rank senior to colonel to four with the rank of colonel, to five with the rank of lieutenant colonel, to fourteen with the rank of major, to thirty-seven with the rank of captain, to thirty-one with the rank of first lieutenant, to thirty-one with the rank of second lieutenant: *Provided further*, That brigadier generals shall be appointed from officers of the Marine Corps senior in rank to lieutenant colonel: *Provided further*, That the promotion to the grade of brigadier general of any officer now or hereafter carried as an additional number in the grade or with the rank of colonel shall be held to fill a vacancy in the grade of brigadier general: *Provided further*, That in determining the officers with rank senior to colonel there shall be included the officer serving as major general commandant: *And provided further*, That appointments hereafter made to the position of major general commandant under the provisions of the Act approved December nineteenth, nineteen hundred and thirteen, entitled "An Act to make the tenure of office of the major general commandant of the Marine Corps for a term of four years," shall be made from officers of the active list of the Marine Corps not below the rank of colonel: *Provided further*, That the officers serving in the senior grade of the Adjutant and Inspector's, Quartermaster's, and Paymaster's Departments shall, while serving therein, have the rank, pay, and allowances of a brigadier general: *And provided further*, That for the purpose of determining the number of officers to the various ranks as herein provided such staff officers shall be counted as being of the rank of

colonel: *And provided further*, That officers holding permanent appointments in the staff departments shall not be eligible for appointment to the grade of brigadier general of the line as hereinbefore provided. [39 Stat. L. 609.]

This and the thirteen paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

For the Act of Dec. 19, 1913, ch. 3, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 301; 6 Fed. Stat. Ann. (2d ed.) 1232.

[Staff officers — proportionate ratio.] The total commissioned personnel of the active list of the staff departments, whether serving therein under permanent appointments or under temporary detail, as herein provided, shall be eight per centum of the authorized commissioned strength of the Marine Corps, and of this total one-fifth shall constitute the adjutant and inspector's department, one-fifth the paymaster's department, and three-fifths the quartermaster's department. [39 Stat. L. 610.]

See the note to the preceding paragraph of the text.

[Details — in lower grade — in upper grade.] No further permanent appointments shall be made in any grade in any staff department. Any vacancy hereafter occurring in the lower grade of any staff department shall be filled by the detail of an officer of the line for a period of four years unless sooner relieved; any vacancy hereafter occurring in the upper grade of any staff department shall be filled by the appointment of an officer with the rank of colonel holding a permanent appointment in the staff department in which the vacancy exists, or of some other officer holding a permanent appointment in such staff department in case there be no permanent staff officer with the rank of colonel in that department, or of a colonel of the line in case there be no officer holding a permanent appointment in such staff department. Such appointments shall be made by the President and be for a term of four years, and the officer so appointed shall be recommissioned in the grade to which appointed. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, this page.

[Permanent staff officers — reappointment in line — rank — probationary line service.] That prior to June thirtieth, nineteen hundred and eighteen, an officer holding a permanent appointment in any staff department may, upon his own application, with the approval of the President, be reappointed in the line of the Marine Corps in the grade and with the rank he would hold on the date of his reappointment if he had remained continuously in the line: *Provided*, That no officer holding a permanent appointment in any staff department shall be recommissioned in the line with the rank of colonel or lieutenant colonel: *Provided further*, That such staff officer shall, before being reappointed in the line of the Marine Corps as above provided, perform line duties for one year, at the expiration of which time he shall as a prerequisite to reappointment in the line be required to establish to the satisfaction of an examining board consisting of line officers of the Marine Corps his physical, mental, and professional fitness for the performance of line duty. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, this page.

[Equalization of promotions — examinations.] That for the purpose of advancement in rank to and including the grade of colonel, all commissioned officers of the line and staff of the Marine Corps shall be placed on a common list in the order of seniority each would hold had he remained continuously in the line. All advancements in rank to captain, major, lieutenant colonel, and colonel shall, subject to the usual examinations, be made from officers with the next junior respective rank, whether of the line or staff, in the order in which their names appear on said list. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Second lieutenants — appointment — conditions.] Appointees to the grade of second lieutenant, if appointed from civil life, shall be between the ages of twenty and twenty-five years, and before receiving a commission in the Marine Corps, each appointee shall establish to the satisfaction of the Secretary of the Navy his mental, physical, moral, and professional qualifications for such commission: *Provided*, The President of the United States be, and hereby is, authorized, by and with the advice and consent of the Senate, to appoint as second lieutenants on the active list in the United States Marine Corps, to take rank at the foot of the list of second lieutenants as it stands at the date of reinstatement, former officers of the Marine Corps who resigned from the naval service in good standing: *Provided*, That they shall establish their moral, physical, mental, and professional qualifications to perform the duties of that grade to the satisfaction of the Secretary of the Navy: *Provided further*, That the Secretary of the Navy, in his discretion, may waive the age limit in favor of the aforesaid former officers of the Marine Corps: *Provided further*, That the prior service of such officers and the service after reinstatement shall be not less than thirty years before the age of retirement. That appointments from noncommissioned officers of the Marine Corps and from civil life shall be for a probationary period of two years and may be revoked at any time during that period by the Secretary of the Navy: *Provided further*, That the rank of such officers of the same date of appointment among themselves at the end of said probationary period shall, with the approval of the Secretary of the Navy, be determined by the report of a board of Marine officers who shall conduct a competitive professional examination under such rules as may be prescribed by the Secretary of the Navy and the rank of such officers so determined shall be as of date of original appointment with reference to other appointments to the Marine Corps: *Provided further*, That no midshipman at the United States Naval Academy or cadet at the United States Military Academy who fails to graduate therefrom shall be eligible for appointment as a commissioned officer in the Marine Corps until after the graduation of the class of which he was a member. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Marine gunner and quartermaster clerk — warrant grades established — appointments.] That the warrant grades of marine gunner and quartermaster clerk are hereby established, and the appointment as herein prescribed of twenty marine gunners and twenty quartermaster clerks is hereby authorized. Officers in those grades shall have the rank and receive the pay, allowances and privileges of retirement of warrant officers in the

Navy. They shall be appointed from the noncommissioned officers of the Marine Corps and clerks to quartermasters now serving as such and who have performed field service. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

There appeared, following this paragraph, in this Act, as originally enacted, a paragraph as follows:

"That officers of the Marine Corps with the rank of colonel who shall have served faithfully for forty-five years on the active list shall, when retired, have the rank of brigadier general; and such officers who shall hereafter be retired at the age of sixty-four years before having served for forty-five years, but who shall have served faithfully on the active list until retired, shall, on the completion of forty years from their entry in the naval service, have the rank of brigadier general."

This was repealed by the Act of May 22, 1917, ch. —, § 14, — Stat. L. —.

[Restoration of retired officers to active list.] The President is hereby authorized, within two years after the approval of this Act, by and with the advice and consent of the Senate, to transfer to the active list of the Marine Corps or Navy Pay Corps any officer under fifty years of age who may have been transferred from the active list to the retired list of the Marine Corps or Navy Pay Corps by the action of any retiring board for physical disability incurred in the line of duty: *Provided*, That such officer shall be transferred to the place on the active list which he would have had if he had not been retired, and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted: *Provided further*, That such officer shall establish to the satisfaction of the Secretary of the Navy his mental, moral, professional, and physical qualifications to perform the duties on the active list of the grade to which he is transferred. The provisions of sections fourteen hundred and ninety-three and fourteen hundred and ninety-four of the Revised Statutes of the United States shall apply to the Marine Corps. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

For R. S. secs. 1493, 1494, mentioned in this paragraph, see 5 Fed. Stat. Ann. 294, 295; 6 Fed. Stat. Ann. (2d ed.) 1140, 1141.

[Officers failing in examinations—loss of files—reexamination—discharge.] In lieu of suspension from promotion of any officer of the Marine Corps who hereafter fails to pass a satisfactory professional examination for promotion, or who is now under suspension from promotion by reason of such failure, such officer shall suffer loss of numbers, upon approval of the recommendation of the examining board, in the respective ranks, as follows: Lieutenant colonel, one; major, two; captain, three; first lieutenant, five; second lieutenant, eight: *Provided*, That any such officer shall be reexamined as soon as may be expedient after the expiration of six months if he in the meantime again becomes due for promotion, and if he does not in the meantime again become due for promotion he shall be reexamined at such time anterior to again becoming due for promotion as may be for the best interests of the service: *Provided further*, That if any such officer fails to pass a satisfactory professional reexamination he shall be honorably discharged with one year's pay from the Marine Corps. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Pay of officers on retired list.] For pay of officers prescribed by law, on the retired list: For two major generals, four brigadier generals, six colonels, four lieutenant colonels, ten majors, nineteen captains, twelve first lieutenants, three second lieutenants and one paymaster's clerk, and for officers who may be placed thereon during the year, including such increased pay as is now or may hereafter be provided for retired officers regularly assigned to active duty, \$180,872.50. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Pay of enlisted men — increase in number of men authorized.] Pay of enlisted men, active list: Pay and allowances of noncommissioned officers, musicians, and privates, as prescribed by law, and for the following additional enlisted men hereby authorized: Twenty-eight sergeants major, one hundred and seventeen quartermaster sergeants, one hundred and seven first sergeants, one hundred and seven gunnery sergeants, five hundred sergeants, eight hundred and thirty-five corporals, fifty drummers, fifty trumpeters, three thousand two hundred and thirty-five privates; and hereafter the number of enlisted men of the Marine Corps shall be exclusive of those sentenced by court-martial to discharge, and for the expenses of clerks of the United States Marine Corps traveling under orders, and including additional compensation for enlisted men of the Marine Corps regularly detailed as gun captains, gun pointers, mess sergeants, cooks, messmen, signalmen, or holding good-conduct medals, pins, or bars, including interest on deposits by enlisted men, post-exchange debts of deserters, under such rules as the Secretary of the Navy may prescribe, and the authorized travel allowance of discharged enlisted men and for prizes for excellence in gunnery exercise and target practice, both afloat and ashore. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Further increase in number of men authorized.] The President is authorized, when, in his judgment, it becomes necessary to place the country in a complete state of preparedness, to further increase the enlisted strength of the Marine Corps to seventeen thousand four hundred: *And provided*, That the distribution in the various grades shall be in the same proportion as that authorized at the time when the President avails himself of the authority herein granted. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Band — composition — pay and allowances.] That the band of the United States Marine Corps shall consist of one leader, whose pay and allowances shall be those of a captain in the Marine Corps; one second leader, whose pay shall be \$150 per month and who shall have the allowances of a sergeant major; ten principal musicians, whose pay shall be \$125 per month; twenty-five first-class musicians, whose pay shall be \$100 per month; twenty second-class musicians, whose pay shall be \$85 per month; and ten third-class musicians, whose pay shall be \$70 per month; such musicians of the band to have the allowances of a sergeant and to have no increase in the rates of pay on account of length of service: *Provided*, That a member of

the said band shall not, as an individual, furnish music, or accept an engagement to furnish music, when such furnishing of music places him in competition with any civilian musician or musicians, and shall not accept or receive remuneration for furnishing music except under special circumstances when authorized by the President. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Camps of instruction — establishment — regulations.] The Secretary of the Navy is hereby authorized to establish and maintain at such places as he may designate, and prescribe regulations for the government thereof, Marine Corps training camps for the instruction of citizens of the United States who make application and are designated for such training; no such camps to be in existence for a period longer than six weeks in each fiscal year, except in time of actual or threatened war; to use Marine Corps and such other Government property as he may deem necessary for the military training of such citizens while in attendance at such camps. The Quartermaster's Department, United States Marine Corps, is authorized to sell such articles of uniform clothing as may be prescribed at cost price to the volunteer citizens who are designated to participate in these instructions: *Provided*, That these citizens shall be required to furnish at their own expense transportation and subsistence to and from these camps, and subsistence while undergoing training therein. The sum of \$31,000 is hereby appropriated to carry into effect the foregoing provisions. [39 Stat. L. 614.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Marine gunners — quartermaster clerks — increased compensation for foreign shore service.] * * * That marine gunners and quartermaster clerks of the Marine Corps assigned to foreign shore service shall hereafter be entitled to the same increased compensation and under the same conditions as is now or hereafter allowed by law to commissioned officers of the Marine Corps. [39 Stat. L. 1188.]

This and the three paragraphs of the text following are from the Naval Appropriation Act of March 4, 1917, ch. 180, under the head "Marine Corps."

[Enlisted men on shore duty — rations or commutation.] * * * Hereafter no law shall be construed to entitle enlisted men on shore duty to any rations or commutation therefor other than such as are now or may hereafter be allowed enlisted men in the Army. [39 Stat. L. 1189.]

See the note to the preceding paragraph of the text.

[Worn out machinery, etc.—exchange.] * * * That hereafter worn-out sewing machines, machinery, rubber tires, and band instruments may be exchanged in part payment for the purchase of like articles. [39 Stat. L. 1189.]

See the note to the first paragraph of this Act, *supra*, this page.

[Pay and allowances — enlisted men detailed as clerks, etc.— forfeiture.] * * * That hereafter no part of the pay and allowances authorized for enlisted men detailed as clerks and messengers in the office of the Major General Commandant and the several staff offices shall be forfeited when granted furlough for not exceeding thirty days in each calendar year. [39 Stat. L. 1191.]

See the note to the first paragraph of this Act, *supra*, p. 567.

SEC. 2. [Marine Corps — enlisted strength — increase.] That the authorized enlisted strength of the active list of the Marine Corps is hereby temporarily increased from seventeen thousand four hundred to seventy-five thousand five hundred, this authorized strength being distributed in the various grades of the enlisted force in the same proportion as those authorized at the date of the approval of this Act: *Provided*, That not more than twenty-five per centum of the authorized number of privates in the Marine Corps shall have the rank of private, first class, which rank is hereby established in the Marine Corps. [— Stat. L. —, as amended by — Stat. L. —.]

The foregoing section 2 and the following section 10 are from an Act of May 22, 1917, ch. —, entitled "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes." Other sections of this Act, applying to both the Navy and the Marine Corps, are given *supra*, p. 523.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 2. That the authorized enlisted strength of the active list of the Marine Corps is hereby temporarily increased from seventeen thousand four hundred to thirty thousand, this authorized strength being distributed in the various grades of the enlisted force in the same proportion as those authorized at the date of the approval of this Act."

SEC. 10. [Marine Corps — second lieutenants — probationary appointment in higher grade.] That, during the continuance of the present war, should any second lieutenant of the Marine Corps holding a probationary appointment for the period of two years become eligible for promotion to a higher grade and qualify therefor before the expiration of two years from the date of original appointment, he shall receive a probationary appointment in such higher grade, which appointment shall be made permanent or shall be vacated in the manner prescribed by the Act of August twenty-ninth, nineteen hundred and sixteen. [— Stat. L. —.]

See the note to the preceding section 2 of this Act.

The Act of Aug. 29, 1916, ch. 417, mentioned in the text, is given *supra*, p. 507.

[SEC. 1.] [Ration or commutation.] That when it is impracticable or the expense is found greater to supply marines serving on shore duty in the island possessions and on foreign stations with the Army ration, such

marines may be allowed the Navy ration or commutation therefor. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

A provision identical with that of this paragraph appeared in the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 613, and the like Act of March 4, 1917, ch. 180, 39 Stat. L. 1189.

[Major general — creation of rank.] The rank and title of Major General is hereby created in the Marine Corps, and the President is authorized to nominate, and, by and with the advice and consent of the Senate, to appoint one Major General, who shall at all times be junior in rank to the Major General Commandant, and also one temporary Major General in the Marine Corps, who shall at all times be junior to the permanent Major General. [— *Stat. L.* —.]

This and the two paragraphs of the text following are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Clerks for assistant paymasters — abolition of title — pay clerks — pay allowances or other benefits.] * * * The title of clerks for assistant paymasters is hereby changed to pay clerk, who shall hereafter receive the same pay, allowances, and other benefits now provided by law for clerks for assistant paymasters; and the total number of pay clerks shall not exceed ten for duty in the office of the paymaster, Marine Corps, fifteen for duty in the paymaster's department at large, and one for each assistant paymaster: *Provided*, That nothing herein contained shall be construed to reduce the pay, allowances, or other benefits granted by existing law to any clerk for assistant paymaster now in service. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Recruits — advertisements.] * * * That hereafter authority is hereby granted to employ the services of advertising agencies in advertising for recruits under such terms and conditions as are most advantageous to the Government. [— *Stat. L.* —.]

See the note to the second preceding paragraph of the text.

Provisions similar to those of the text, but without the word "hereafter," have appeared in Naval Appropriation Acts for preceding years.

X. MARINE CORPS RESERVE

[Marine Corps Reserve — established — classes.] A United States Marine Corps Reserve, to be a constituent part of the Marine Corps and in addition to the authorized strength thereof, is hereby established under the same provisions in all respects (except as may be necessary to adapt the said provisions to the Marine Corps) as those providing for the Naval Reserve Force in this Act: *Provided*, That the Marine Corps Reserve may consist of not more than five classes, corresponding, as near as may be, to the Fleet Naval Reserve, the Naval Reserve, the Naval Coast Defense

Reserve, the Volunteer Naval Reserve, and the Naval Reserve Flying Corps, respectively.

All Acts or parts of Acts relating to the Naval Reserve which are inconsistent with the provisions of this Act relating to the Naval Reserve Force are hereby repealed. [39 Stat. L. 593.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

NEUTRALITY

Act of June 15, 1917, ch. —, 570.

Title V. Enforcement of Neutrality, 570.

Sec. 1. Withholding Clearance from or to Any Vessel — Attempted Violation of Laws, 570.

2. Detention of Armed Vessels, 571.

3. Sending Out Armed Vessels to Belligerent Nations, 571.

4. Clearance of Vessels — Conditions Precedent, 571.

5. Refusal of Clearance, 572.

6. Violation of Provision of Title — Punishment, 572.

7. Interned Persons — Escape, etc. — Punishment, 572.

8. Enforcement of Purposes of Title, 572.

11. Repeal of Res. of March 4, 1915, No. 14, 573.

TITLE V

ENFORCEMENT OF NEUTRALITY

SEC. 1. [Withholding clearance from or to any vessel — attempted violation of laws.] During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may withhold clearance from or to any vessel, domestic or foreign, which is required by law to secure clearance before departing from port or from the jurisdiction of the United States, or, by service of formal notice upon the owner, master, or person in command or having charge of any domestic vessel not required by law to secure clearance before so departing, to forbid its departure from port or from the jurisdiction of the United States, whenever there is reasonable cause to believe that any such vessel, domestic or foreign, whether requiring clearance or not, is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations; and it shall thereupon be unlawful for such vessel to depart. [— Stat. L. —.]

The foregoing section 1 and the following sections 2–7, 9 and 11 are a part of "Title V. Enforcement of Neutrality" of the Espionage Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in CRIMINAL LAW, ante, p. 133, contains general provisions applicable to this title and should be considered in connection with it.

Sections 8 and 10 of this Title amend Penal Laws, §§ 13 and 15, respectively, and are given under PENAL LAWS, post, p. 579.

SEC. 2. [Detention of armed vessels.] During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed by the said owners, or master, or person having charge thereof, to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas. [— *Stat. L.* —.]

See the notes to the preceding section 1 of this Title.

SEC. 3. [Sending out armed vessels to belligerent nations.] During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 4. [Clearance of vessels — conditions precedent.] During a war in which the United States is a neutral nation, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, each of which sections of the Revised Statutes is hereby declared to be and is continued in full force and effect, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall deliver to the collector of customs for the district wherein such vessel is then located a statement duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government, to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same

manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

For R. S. secs. 4197, 4198, 4200, mentioned in this section, see 7 Fed. Stat. Ann. 45, 46; 9 Fed. Stat. Ann. (2d ed.) 296, 297.

SEC. 5. [Refusal of clearance.] Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in the foregoing section are false, the collector of customs for the district in which the vessel is located may, subject to review by the Secretary of Commerce, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the jurisdiction of the United States; and it shall thereupon be unlawful for the vessel to depart. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 6. [Violation of provision of title — punishment.] Whoever, in violation of any of the provisions of this title, shall take, or attempt or conspire to take, or authorize the taking of any such vessel, out of port or from the jurisdiction of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 7. [Interned persons — escape, etc. — punishment.] Whoever, being a person belonging to the armed land or naval forces of a belligerent nation or belligerent faction of any nation and being interned in the United States, in accordance with the law of nations, shall leave or attempt to leave said jurisdiction, or shall leave or attempt to leave the limits of internment in which freedom of movement has been allowed, without permission from the proper official of the United States in charge, or shall willfully overstay a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct; and whoever, within the jurisdiction of the United States and subject thereto, shall aid or entice any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisonment not more than one year, or both. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 9. [Enforcement of purposes of title.] That the President may employ such part of the land or naval forces of the United States as he

may deem necessary to carry out the purposes of this title. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 11. [Repeal of Res. of March 4, 1915, No. 14.] The joint resolution approved March fourth, nineteen hundred and fifteen, "To empower the President to better enforce and maintain the neutrality of the United States," and any Act or parts of Acts in conflict with the provisions of this title are hereby repealed. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

For the Res. of March 4, 1915, No. 14, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 180; 6 Fed. Stat. Ann. (2d ed.) 1242.

NEWSPAPERS

See TRADING WITH THE ENEMY.

PANAMA CANAL AND CANAL ZONE

See CRIMINAL LAW; HOSPITALS AND ASYLUMS; RIVERS, HARBORS AND CANALS.

PARKS

See PUBLIC PARKS.

PASSPORTS

Act of June 15, 1917, ch. —, 573.

Title IX. Passports, 573.

- Sec. 1. Application — Necessity — Form — Fees of Officials, 573.*
2. False Statements in Passports, 574.
3. Using, etc., Another's Passport or Any Passport in Violation of Law, 574.
4. Counterfeit, etc., Passports, 574.

CROSS-REFERENCE

See CRIMINAL LAW.

TITLE IX.

PASSPORTS.

SEC. 1. [Application — necessity — form — fees of officials.] Before a passport is issued to any person by or under authority of the United States

such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. Clerks of United States courts, agents of the Department of State, or other Federal officials authorized, or who may be authorized, to take passport applications and administer oaths thereon, shall collect, for all services in connection therewith, a fee of \$1, and no more, in lieu of all fees prescribed by any statute of the United States, whether the application is executed singly, in duplicate, or in triplicate. [— *Stat. L.* —.]

The foregoing section 1 and the following sections 2-4 constitute "Title IX. Passports" of the Espionage Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in *CRIMINAL LAW*, *ante*, p. 133, contains general provisions applicable to this Title and should be read in connection therewith.

SEC. 2. [False statements in passports.] Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than \$2,000 or imprisoned not more than five years or both. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Title.

SEC. 3. [Using, etc., another's passport or any passport in violation of law.] Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [— *Stat. L.* —.]

See the note to section 1 of this Title, *supra*, this page.

SEC. 4. [Counterfeit, etc., passports.] Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument pur-

porting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invaliding the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [*— Stat. L. —.*]

See the note to section 1 of this Title, *supra*, p. 574.

PATENTS

Act of Feb. 15, 1916, ch. 22, 575.

Sec. 1. Officers and Employees — R. S. Sec. 476 Amended, 575.

2. Salaries — R. S. Sec. 477 Amended, 575.

Act of July 6, 1916, ch. 225, 576.

Sec. 1. Application for Patent — Completion — Time Limit — R. S. Sec. 4894 Amended, 576.

Act of Aug. 17, 1916, ch. 350, 576.

Sec. 1. Filing Application — Extension of Time, 576.

2. Limited to Citizens of Nations Granting Reciprocal Rights, 577.

3. Operation of Act, 577.

Act of Oct. 6, 1917, ch. —, 577.

Publication of Patent — Pendency of War, 577.

Act of July 1, 1918, ch. —, 578.

Recovery for Unlicensed Use of Patent by United States — Claims — Defenses — Patents by Government Employees — Former Act Amended, 578.

CROSS-REFERENCE

See *TRADING WITH THE ENEMY*.

[**SEC. 1.**] [**Officers and employees — R. S. sec. 476 amended.**] That section four hundred and seventy-six of the Revised Statutes be, and the same is hereby, amended to read as follows:

“**Sec. 476.** There shall be in the Patent Office a Commissioner of Patents, one first assistant commissioner, one assistant commissioner, and five examiners in chief, who shall be appointed by the President, by and with the advice and consent of the Senate. The first assistant commissioner and the assistant commissioner shall perform such duties pertaining to the office of commissioner as may be assigned to them, respectively, from time to time by the Commissioner of Patents. All other officers, clerks, and employees authorized by law for the office shall be appointed by the Secretary of the Interior upon the nomination of the Commissioner of Patents, in accordance with existing law.” [39 *Stat. L.* 8.]

The foregoing section 1 and the following section 2 are a part of an Act of Feb. 15, 1916, ch. 22, entitled “An Act Amending sections four hundred and seventy-six, four hundred and seventy-seven, and four hundred and forty of the Revised Statutes of the United States.”

Section 3 of this Act amended R. S. sec. 440 and is given in *INTERIOR DEPARTMENT, ante*, p. 269.

For R. S. sec. 476 amended by this section see 5 *Fed. Stat. Ann.* 411; 7 *Fed. Stat. Ann.* (2d ed.) 4.

SEC. 2. [Salaries — R. S. sec. 477 amended.] That section four hundred and seventy-seven of the Revised Statutes be amended to read as follows:

“Sec. 477. The salaries of the officers mentioned in the preceding section shall be as follows:

“The Commissioner of Patents, \$5,000 a year.

“The First Assistant Commissioner of Patents, \$4,500 a year.

“The Assistant Commissioner of Patents, \$3,500 a year.

“Five examiners in chief, \$3,500 a year each.” [39 Stat. L. 9.]

See the notes to the preceding section 1 of this Act.

For R. S. sec. 477 amended by this section see 5 Fed. Stat. Ann. 412; 7 Fed. Stat. Ann. (2d ed.) 5.

[SEC. 1.] [Application for patent — completion — time limit — R. S. sec. 4894 amended.] Section forty-eight hundred and ninety-four of the Revised Statutes is amended so as to read as follows:

“Sec. 4894. All applications for patents shall be completed and prepared for examination within one year after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable: *Provided*. That no application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States: *Provided further*, That within ninety days, and not less than thirty days, before the expiration of any such three-year period the Commissioner of Patents shall, in writing, notify the head of the department interested in any pending application for patent, of the approaching expiration of the three-year period within which any application for patent shall have been pending.” [39 Stat. L. 348.]

This is from the Fortifications Appropriation Act of July 6, 1916, ch. 225.

For R. S. sec. 4894, amended by this Act, see 5 Fed. Stat. Ann. 488; 7 Fed. Stat. Ann. (2d ed.) 181.

An Act To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States citizens.

[Act of Aug. 17, 1916, ch. 350, 39 Stat. L. 516.]

[SEC. 1.] [Filing application — extension of time.] That any applicant for letters patent or for the registration of any trade-mark, print, or label, being within the provisions of this Act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by

law, shall be granted an extension of nine months beyond the expiration of said period. [39 Stat. L. 516.]

Since this Act relates also to trade-marks, prints, etc., it is repeated under TRADE-MARKS, *post*.

SEC. 2. [Limited to citizens of nations granting reciprocal rights.] That the provisions of this Act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this Act to the citizens or subjects of any country while said country is at war with the United States. [39 Stat. L. 516.]

SEC. 3. [Operation of Act.] That this Act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this Act grants relief shall have the same force and effect as if said default had not occurred. [39 Stat. L. 516.]

An Act To prevent the publication of inventions by the grant of patents that might be detrimental to the public safety or convey useful information to the enemy, to stimulate invention, and provide adequate protection to owners of patents, and for other purposes.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Publication of patent — pendency of war.] That whenever during a time when the United States is at war the publication of an invention by the granting of a patent might, in the opinion of the Commissioner of Patents, be detrimental to the public safety or defense or might assist the enemy or endanger the successful prosecution of the war he may order that the invention be kept secret and withhold the grant of a patent until the termination of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the commissioner that in violation of said order said invention has been published or that an application for a patent therefor has been filed in a foreign country by the inventor or his assigns or legal representatives, without the consent or approval of the Commissioner of Patents, or under a license of the Secretary of Commerce as provided by law.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the Commissioner of Patents above referred to shall tender his invention to the Government of the United States for its use, he shall, if and when he ultimately received a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government. [— Stat. L. —.]

[**Recovery for unlicensed use of patent by United States — claims — defenses — patents by government employees — former Act amended.**] The Act entitled “An Act to provide additional protection for the owners of patents of the United States, and for other purposes,” approved June twenty-fifth, nineteen hundred and ten, shall be, and the same is hereby, amended to read as follows, namely:

“That whenever an invention described in and covered by a patent of the United States shall hereafter be used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, such owner’s remedy shall be by suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture: *Provided, however,* That said Court of Claims shall not entertain a suit or award compensation under the provisions of this Act where the claim for compensation is based on the use or manufacture by or for the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further,* That the benefits of this Act shall not inure to any patentee who, when he makes such claim, is in the employment or service of the Government of the United States, or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service.” [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

For the Act of June 25, 1910, ch. 423, amended by the text, see 1912 Supp. Fed. Stat. Ann. 286; 7 Fed. Stat. Ann. (2d ed.) 375.

PENAL LAWS

Act of May 7, 1917, ch. —, 579.

Enlisting in Foreign Service — Penal Laws, Sec. 10, Amended, 579.

Act of June 15, 1917, ch. —, 579.

Sec. 8. Military Expeditions against People at Peace with United States — Penal Laws, Sec. 13, Amended, 579.

10. Compelling Foreign Vessels to Depart — Penal Laws, Sec. 15, Amended, 579.

Act of March 4, 1917, ch. 180, 580.

Trespassing on, Injuring, etc., Military Works — Violating Regulations within Established Defensive Sea Areas — Penal Laws, Sec. 44, Amended, 580.

Act of May 22, 1917, ch. —, 580.

Sec. 19. Trespassing on, Injuring, etc., Military Works — Violating Regulations within Established Defensive Sea Areas — Penal Laws, Sec. 44, Amended, 580.

Act of May 18, 1916, ch. 126, 581.

Sec. 10. Letter Boxes and Mail Therein — Injury to — Theft — Penal Laws, Sec. 198, Amended, 581.

CROSS-REFERENCES

See *CRIMINAL LAW*; *NAVY*; *PRESIDENT*; *PUBLIC LANDS*

An Act To amend section ten of chapter two of the Criminal Code

[*Act of May 7, 1917, ch. —, — Stat. L. —.*]

[**Enlisting in foreign service — Penal Laws, sec. 10 amended.**] That section 10 of chapter two of an Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be amended so as to read as follows:

"SEC. 10. Whoever, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, State, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than three years: *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War." [*— Stat. L. —.*]

For Penal Laws, § 10, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 407; 7 Fed. Stat. Ann. (2d ed.) 430.

SEC. 8. [**Military expeditions against people at peace with United States — Penal Laws, sec. 13 amended.**] Section thirteen of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, is hereby amended so as to read as follows:

"SEC. 13. Whoever, within the territory or jurisdiction of the United States or of any of its possessions, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or who takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both." [*— Stat. L. —.*]

The foregoing section 8 and the following section 10 are a part of Title IX of the Espionage Act of June 15, 1917, ch. —, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes."

For Penal Laws, § 13, amended by this section, see 1909 Supp. Fed. Stat. Ann. 408; 7 Fed. Stat. Ann. (2d ed.) 460.

SEC. 10. [**Compelling foreign vessels to depart — Penal Laws, sec. 15 amended.**] Section fifteen of the Act entitled "An Act to codify, revise,

and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, is hereby amended so as to read as follows:

"SEC. 15. It shall be lawful for the President to employ such part of the land or naval forces of the United States, or of the militia thereof, as he may deem necessary to compel any foreign vessel to depart from the United States or any of its possessions in all cases in which, by the law of nations or the treaties of the United States, it ought not to remain, and to detain or prevent any foreign vessel from so departing in all cases in which, by the law of nations or the treaties of the United States, it is not entitled to depart." [— *Stat. L.* —.]

See the note to the preceding section 8 of this Act.

For Penal Laws, § 15, amended by this section, see 1909 Supp. Fed. Stat. Ann. 409; 7 Fed. Stat. Ann. (2d ed.) 481.

[**Trespassing on, injuring, etc., military works — violating regulations within established defensive sea areas — Penal Laws, sec. 44 amended.**]

* * * That section forty-four of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"SEC. 44. Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished on conviction thereof in a district or circuit court of appeals of the United States for the district or circuit in which the offense is committed, or into which the offender is first brought, by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court." [39 *Stat. L.* 1194.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For Penal Laws, § 44, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 417; 7 Fed. Stat. Ann. (2d ed.) 610.

Said section 44 was subsequently amended by the Act of May 22, 1917, ch. —, § 19, given in the following paragraph of the text.

SEC. 19. [**Trespassing on, injuring, etc., military works — violating regulations within established defensive sea areas — Penal Laws, sec. 44 amended.**] That section forty-four of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by an Act entitled "An Act making appropriation for the naval service for the fiscal year ending

June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March fourth, nineteen hundred and seventeen, be, and is hereby, amended by adding the following to said section:

"*Provided*, That offenses hereunder committed within the Canal Zone or within any defensive sea areas which the President is authorized to establish by said section, shall be cognizable in the District Court of the Canal Zone, and jurisdiction is hereby conferred upon said court to hear and determine all such cases arising under said section and to impose the penalties therein provided for the violation of any of the provisions of said section." [— *Stat. L.* —.]

This is from the Act of May 22, 1917, ch. —, providing for the temporary increase of the Navy and Marine Corps and for other purposes.

For Penal Laws, § 44, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 417; 7 Fed. Stat. Ann. (2d ed.) 610.

Said section 44 was previously amended by the Act of March 4, 1917, ch. 180, given in the preceding paragraph of the text.

SEC. 10. [Letter boxes and mail therein — injury to — theft — Penal Laws, sec. 198 amended.] That section one hundred and ninety-eight of the Act of March fourth, nineteen hundred and nine (Thirty-fifth Statutes, page eleven hundred and twenty-six), be amended to read as follows:

"That whoever shall willfully or maliciously injure, tear down, or destroy any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or shall break open the same, or shall willfully or maliciously injure, deface, or destroy any mail deposited therein, or shall willfully take or steal such mail from or out of such letter box or other receptacle, or shall willfully aid or assist in any of the aforementioned offenses, shall for every such offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than three years." [39 *Stat. L.* 162, as amended by 39 *Stat. L.* 418.]

The above section 10 is from the Act of May 18, 1916, ch. 126, entitled "An Act to amend the Act approved June twenty-fifth, nineteen hundred and ten, authorizing the postal savings system, and for other purposes."

This Act was amended by inserting after the initial word "That" the words "section one hundred and ninety-eight of the" by the Postal Service Appropriation Act of July 28, 1916, ch. 261, § 1, 39 *Stat. L.* 418, making the Act to read as here given.

For Penal Laws, § 198, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 458; 7 Fed. Stat. Ann. (2d ed.) 775.

PENSIONS

Act of April 27, 1916, ch. 88, 582.

Sec. 1. Army and Navy Medal of Honor Roll — Establishment — Applications, 582.

2. Special Pension — Award to Medal of Honor Men, 583.

3. Special Pension — Amount — Commencement — Continuance — Effect, 583.

4. Persons Having Two or More Medals of Honor — Rank as Affecting Pension, 584.

Act of June 30, 1916, ch. 194, 584.

Medal of Honor Pensioners — Allowances Out of What Payable, 584.

Act of Aug. 29, 1916, ch. 418, 584.

Loyalty — R. S. Sec. 4716 Requiring Repealed, 584.

Act of Sept. 8, 1916, ch. 470, 584.

Sec. 1. Increase of Pensions to Widows and Minors, 584.

2. Reinstatement of Widow Dropped for Remarriage on Becoming Widow, etc. — Conditions — Widows Remarrying, 585.

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4. Claim Agent or Attorney — Recognition in Adjudication of Claims — Fees, 586.

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Military or Naval Service During Civil War — Rate of Pension — Agents and Attorneys — Fees — Former Act Amended, 589.

Act of July 16, 1918, ch. —, 589.

Sec. 1. Widows and Minor Children — War with Spain — Philippine Insurrection — Chinese Boxer Rebellion, 589.

2. Prosecution of Claims — Agents and Attorneys — Fees — Withholding Pension Money — Offenses, 590.

CROSS-REFERENCES

See **HEALTH AND QUARANTINE; WAR DEPARTMENT AND MILITARY ESTABLISHMENT**

An Act To establish in the War Department and in the Navy Department, respectively, a roll designated as "the Army and Navy medal of honor roll," and for other purposes.

[Act of April 27, 1916, ch. 88, 39 Stat. L. 53.]

[SEC. 1.] [Army and navy medal of honor roll — establishment — applications.] That there is hereby established in the War Department and Navy Department, respectively, a roll designated as "the Army and Navy medal of honor roll." Upon written application made to the Secretary of the proper department, and subject to the conditions and requirements hereinafter contained, the name of each surviving person who has served in the military or naval service of the United States in any war, who has attained or shall attain the age of sixty-five years, and who has been awarded a medal of honor for having in action involving actual conflict with an enemy distinguished himself conspicuously by gallantry or intrepidity, at the risk of his life, above and beyond the call of duty, and who was honorably discharged from service by muster out, resignation, or otherwise, shall be, by the Secretary of the proper department, entered and recorded on said roll. Applications for entry on said roll shall be made

in such form and under such regulations as shall be prescribed by the War Department and Naval Department, respectively, and proper blanks and instructions shall be, by the proper Secretary, furnished without charge upon request made by any person claiming the benefits of this Act. [39 Stat. L. 53.]

SEC. 2. [Special pension — award to medal of honor men.] That it shall be the duty of the Secretary of War and of the Secretary of the Navy to carry this Act into effect and to decide whether each applicant, under this Act, in his department is entitled to the benefit of this Act. If the official award of the medal of honor to the applicant, or the official notice to him thereof, shall appear to show that the medal of honor was awarded to the applicant for such an act as is required by the provisions of this Act, it shall be deemed sufficient to entitle the applicant to such special pension without further investigation. Otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence now on file in any public office or department shall be considered. A certificate of service and of the act of heroism, gallantry, bravery, or intrepidity for which the medal of honor was awarded, and of enrollment under this Act, and of the right of the special pensioner to be entitled to and to receive the special pension herein granted, shall be furnished each person whose name shall be so entered on said roll. The Secretary of War and the Secretary of the Navy shall deliver to the Commissioner of Pensions a certified copy of each of such of said certificates as he may issue, as aforesaid, and the same shall be full and sufficient authority to the Commissioner of Pensions for the payment by him to the beneficiary named in each such certificate the special pension herein provided for. [39 Stat. L. 54.]

SEC. 3. [Special pension — amount — commencement — continuance — effect.] That each such surviving person whose name shall have been entered on said roll in accordance with this Act shall be entitled to and shall receive and be paid by the Commissioner of Pensions in the Department of the Interior, out of any moneys in the Treasury of the United States not otherwise appropriated, a special pension of \$10 per month for life, payable quarter yearly. The Commissioner of Pensions shall make all necessary rules and regulations for making payment of such special pensions to the beneficiaries thereof.

Such special pension shall begin on the day that such person shall file his application for enrollment on said roll in the office of the Secretary of War or of the Secretary of the Navy after the passage and approval of this Act, and shall continue during the life of the beneficiary.

Such special pension shall not deprive any such special pensioner of any other pension or of any benefit, right, or privilege to which he is or may hereafter be entitled under any existing or subsequent law, but shall be in addition thereto.

The special pension allowed under this Act shall not be subject to any attachment, execution, levy, tax, lien, or detention under any process whatever. [39 Stat. L. 54.]

The appropriation from which these sections are to be paid was prescribed by the Act of June 30 1916, ch. 194, given in the second paragraph of the text following.

SEC. 4. [Persons having two or more medals of honor — rank as affecting pension.] That in case any person has been awarded two or more medals of honor, he shall not be entitled to and shall not receive more than one such special pension.

Rank in the service shall not be considered in applications filed hereunder. [39 Stat. L. 54.]

[Medal of honor pensioners — allowances out of what payable.]

* * * That all allowances made, or hereafter to be made, to medal of honor pensioners under the Act of Congress approved April twenty-seventh, nineteen hundred and sixteen, shall be paid from the moneys appropriated for the payment of invalid and other pensions, and section three of the said Act of April twenty-seventh, nineteen hundred and sixteen, is amended accordingly. [39 Stat. L. 242.]

This paragraph is from the Pension Appropriation Act of June 30, 1916, ch. 194. The Act of April 27, 1916, ch. 88, § 3, mentioned in the text, is given in the second preceding paragraph of the text.

[SEC. 1.] [Loyalty — R. S. sec. 4716 requiring repealed.] * * * That section forty-seven hundred and sixteen of the Revised Statutes be, and the same is hereby, repealed. [39 Stat. L. 649.]

This is from the Army Appropriation Act of August 29, 1916, ch. 418. For R. S. sec. 4716, repealed by the text, see 5 Fed. Stat. Ann. 642; 7 Fed. Stat. Ann. (2d ed.) 1027.

The provisions of said R. S. sec. 4716 were as follows:

"SEC. 4716. No money on account of pensions shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States."

An Act To amend an Act entitled "An Act to increase the pensions of widows, minor children and so forth, of deceased soldiers and sailors of the late Civil War, the War with Mexico, the various Indian wars, and so forth, and to grant a pension to certain widows of the deceased soldiers and sailors of the late Civil War," approved April nineteenth, nineteen hundred and eight, and for other purposes.

[Act of Sept. 8, 1916, ch. 470, 39 Stat. L. 844.]

[SEC. 1.] [Increase of pensions to widows and minors.] That from and after the passage of this Act the rate of pension for a widow, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, who was the lawful wife of any officer or enlisted man in the Army, Navy, or Marine Corps of the United States, during the period of his service in the Civil War, shall be \$20 per month, and the rate of pension for a widow of an officer or enlisted man of the Army, Navy, or Marine Corps of the United States who served in the Civil War, the War with Mexico, or the War of Eighteen hundred and twelve, now on the roll or hereafter to be placed on the pension roll and entitled to

receive a less rate than hereafter provided, who has reached or shall hereafter reach the age of seventy years shall be \$20 per month; and nothing herein shall be construed to affect the existing allowance of \$2 per month for each child under the age of sixteen years and for each helpless child; and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. [39 Stat. L. 844.]

For the Act of April 19, 1908, ch. 147, mentioned in the title of this Act, see 1909 Supp. Fed. Stat. Ann. 508; 7 Fed. Stat. Ann. (2d ed.) 1109.

SEC. 2. [Reinstatement of widow dropped for remarriage on becoming widow, etc.—conditions—widows remarrying.] That any widow of an officer or enlisted man who served in the Army, Navy, or Marine Corps of the United States during the Civil War whose name was placed or shall hereafter be placed on the pension roll, under any existing law, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced upon her own application and without fault on her part, shall be entitled to have her name again placed on the pension roll at the rate allowed by the law under which she was formerly pensioned, and the law or laws amendatory thereof, unless she be entitled to a greater rate of pension under the provisions of section one of this Act, such pension to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act: *Provided, however*, That where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to renewal under this Act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the renewal of pension to said widow payment of pension to said child or children shall cease: *And provided further*, That the provisions of this Act shall be extended to those widows, otherwise entitled, whose husbands died of wounds, injuries or disease incurred during the period of their military or naval service, but who were deprived of pension under the Act of March third, eighteen hundred and sixty-five, because of their failure to draw any pensions by reason of their remarriage, and to any person who was lawfully married to an officer or enlisted man, who served in the Army, Navy, or Marine Corps of the United States during the Civil War and was honorably discharged therefrom and has since deceased and who, having remarried since his death is again a widow, or has been divorced from her last husband upon her own application without fault on her part and who, otherwise entitled, was barred by reason of such remarriage from receiving pension under any existing law. [39 Stat. L. 845.]

The Act mentioned in this section is the Act of March 3, 1865, ch. 84, 13 Stat. L. 499

SEC. 3. [Title to pension—commencement—pension to children—effect on widow.] That any widow, as described in section two of the Act

approved April nineteenth, nineteen hundred and eight, who married the soldier or sailor prior to June twenty-seventh, nineteen hundred and five, shall have title to pension under the provisions of said section of said Act, to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act: *Provided, however,* That where a pension has been granted to a soldier's or sailor's helpless or idiotic child or children, or child or children under the age of sixteen years, his widow shall not be entitled to pension under this section, unless the pension to such child or children has terminated, or unless such child or children be a member or members of her family and cared for by her, and upon allowance of pension to the widow, payment of pension to such child or children shall cease. [39 Stat. L. 845.]

For the Act of April 19, 1908, ch. 147, § 2, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 509; 7 Fed. Stat. Ann. (2d ed.) 1109.

SEC. 4. [Claim agent or attorney—recognition in adjudication of claims—fees.] That no claim agent or attorney shall be recognized in the adjudication of claims under the first section of this Act, nor shall any claim agent or attorney be recognized in the adjudication of claims under the second section of this Act for renewal of pension previously allowed, and in claims for original pension under section two of this Act no greater sum than \$10 shall be allowed for services in preparing, presenting, or prosecuting such claim, which sum shall be paid only upon the order of the Commissioner of Pensions under such rules and regulations as he may deem proper to make. [39 Stat. L. 845.]

[Claimant for pension—examination fee.] * * * That hereafter the fee for each examination made at the claimant's residence by an examining surgeon of the Bureau of Pensions for use in a pension claim shall be \$4 and in lieu of actual traveling expenses there shall be paid 10 cents per mile for the distance actually traveled each way, but not exceeding the distance by the most direct route between the surgeon's office and the claimant's home. [39 Stat. L. 1132.]

This is from the Pension Appropriation Act of March 3, 1917, ch. 170.

An Act To pension the survivors of certain Indian Wars from January first, eighteen hundred and fifty-nine, to January, eighteen hundred and ninety-one, inclusive, and for other purposes.

[Act of March 4, 1917, ch. 189, 39 Stat. L. 1199.]

[SEC. 1.] [Survivors, etc., of Indian wars.] That the provisions, limitations, and benefits of an Act entitled "An Act granting pensions to

survivors of the Indian wars of eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, known as the Black Hawk War, Creek War, Cherokee disturbances, and the Seminole War," approved July twenty-seventh, eighteen hundred and ninety-two, as amended on February nineteenth, nineteen hundred and thirteen, be, and the same are hereby, extended from the date of the passage of this Act to the surviving officers and enlisted men of the Texas volunteers who served in defense of the frontier of that State against Indian depredations from January first, eighteen hundred and fifty-nine, to January first, eighteen hundred and sixty-one, inclusive, and from the year eighteen hundred and sixty-six to the year eighteen hundred and seventy-seven, inclusive, and to the surviving officers and enlisted men, including militia and volunteers of the military service of the United States, who have reached the age of sixty-two years, and who served for thirty days in the campaign in southern Oregon and Idaho and northern parts of California and Nevada from eighteen hundred and sixty-five to eighteen hundred and sixty-eight, inclusive; the campaign against the Sioux in Minnesota and the Dakotas in eighteen hundred and sixty-two and eighteen hundred and sixty-three, and the campaigns against the Sioux in Wyoming in eighteen hundred and sixty-five to eighteen hundred and sixty-eight; to the following organizations of the First Regiment Nebraska Militia engaged in fighting Indians and guarding United States mails on the western frontier: Company A, First Regiment, First Brigade Nebraska Militia, who served from August thirtieth, eighteen hundred and sixty-four, to November twelfth, eighteen hundred and sixty-four; Company B, First Regiment Nebraska Militia, who served from August thirteenth, eighteen hundred and sixty-four, to February thirteenth, eighteen hundred and sixty-five; Company C, First Regiment, Second Brigade Nebraska Militia, who served from August twenty-fourth, eighteen hundred and sixty-four, to February seventh, eighteen hundred and sixty-five; to Captain Edward P. Childs's artillery detachment, Nebraska Militia, who served from August thirtieth, eighteen hundred and sixty-four, to November twelfth, eighteen hundred and sixty-four; and Company A, First Regiment, Second Brigade Nebraska Militia, who served from August twelfth, eighteen hundred and sixty-four, to December twenty-fourth, eighteen hundred and sixty-four; the campaign against the Cheyennes, Arapahoes, Kiowas, and Comanches in Kansas, Colorado, and Indian Territory from eighteen hundred and sixty-seven to eighteen hundred and sixty-nine, inclusive; the Modoc War of eighteen hundred and seventy-two and eighteen hundred and seventy-three; the campaign against the Apaches of Arizona and New Mexico, or either of them, in eighteen hundred and seventy-three; the campaign against the Kiowas, Comanches, and Cheyennes in Kansas, Colorado, Texas, Indian Territory, and New Mexico in eighteen hundred and seventy-four and eighteen hundred and seventy-five; the campaign against the Northern Cheyennes and Sioux in eighteen hundred and seventy-six and eighteen hundred and seventy-seven; the Nez Perce War of eighteen hundred and seventy-seven; the Bannock War of eighteen hundred and seventy-eight; the campaign against the Northern Cheyennes in eighteen hundred and seventy-eight and eighteen hundred and seventy-nine; the campaigns in the Black Hawk Indian war in Utah from eighteen hundred and sixty-five

to eighteen hundred and sixty-seven, inclusive; the campaign against the Ute Indians in Colorado and Utah, from September, eighteen hundred and seventy-nine, to November, eighteen hundred and eighty, inclusive; the campaign against the Apache Indians in Arizona and New Mexico, or either of them, in eighteen hundred and eighty-five and eighteen hundred and eighty-six; and the campaign against the Sioux Indians in South Dakota, from November, eighteen hundred and ninety, to January, eighteen hundred and ninety-one, inclusive; and also to include the surviving widows of said officers and enlisted men who shall have married said survivor prior to the passage of this Act: *Provided*, That such widows have not remarried: *Provided further*, That this Act shall extend also to the surviving officers and enlisted men of the organization known as Tyler's Rangers, recruited at Black Hawk, Colorado, eighteen hundred and sixty-four, for services against the Indians: *Provided further*, That if any certain one of the said campaigns did not cover a period of thirty days, the provisions of this Act shall apply to those who served during the entire period of said campaign: *Provided further*, That where there is no record of enlistment or muster into the service of the United States in any of the wars mentioned in this Act, the record of pay by the United States shall be accepted as full and satisfactory proof of such enlistment and service: *And provided further*, That all contracts heretofore made between the beneficiaries under this Act and pension attorneys and claim agents are hereby declared null and void. [39 Stat. L. 1199.]

For the Act of July 27, 1892, ch. 277, mentioned in the text, see 5 Fed. Stat. Ann. 659; 7 Fed. Stat. Ann. (2d ed.) 1092.

For the Act of Feb. 19, 1913, ch. 59, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 307; 7 Fed. Stat. Ann. (2d ed.) 1115.

SEC. 2. [Period of service — evidence.] That the period of service performed by beneficiaries under this Act shall be determined by reports from the records of the War Department, where there is such a record, and by the reports from the records of the Treasury Department showing payment by the United States where there is no record of regular enlistment or muster into the United States military service: *Provided*, That when there is no record of service or payment for same in the War Department or Treasury Department, the applicant may establish the service by satisfactory evidence from the muster rolls on file in the several State or Territorial archives: *And provided further*, That the want of a certificate of discharge shall not deprive any applicant of the benefits of this Act. [39 Stat. L. 1200.]

SEC. 3. [Requisite of loyalty — applicability of R. S. sec. 4716.] That the provisions of section forty-seven hundred and sixteen of the Revised Statutes shall not apply to applicants for pension under this Act. [39 Stat. L. 1201.]

For R. S. sec. 4716 mentioned in the text see 5 Fed. Stat. Ann. 642; 7 Fed. Stat. Ann. (2d ed.) 1027.

Said R. S. sec. 4716 was repealed by the Act of Aug. 29, 1916, ch. 418, § 1, *supra*, p. 584, and is noted thereunder.

An Act To amend an Act entitled "An Act granting pensions to certain enlisted men, soldiers, and officers who served in the Civil War and the War with Mexico," approved May eleventh, nineteen hundred and twelve.

[*Act of June 10, 1918, ch. —, — Stat. L. —.*]

[**Military or naval service during Civil War — rate of pension — agents and attorneys — fees — former Act amended.**] That the general pension Act of May eleventh, nineteen hundred and twelve, is hereby amended by adding a new section, to read as follows:

"SEC. 6. That from and after the passage of this Act the rate of pension for any person who served ninety days or more in the military or naval service of the United States during the Civil War, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, shall be \$30 per month. In case such a person has reached the age of seventy-two years and served six months, the rate shall be \$32 per month; one year, \$35 per month; one and a half years, \$38 per month; two years or over, \$40 per month: *Provided*, That this Act shall not be so construed as to reduce any pension under any Act, public or private: *Provided further*, That no pension attorney, claim agent, or other person, shall be entitled to receive any compensation for presenting any claim to the Bureau of Pensions under this Act, except in applications for original pension by persons who have not heretofore received a pension." [*— Stat. L. —.*]

For the Act of May 11, 1912, ch. 123, amended by this Act see 1912 Supp. Fed. Stat. Ann. 307; 7 Fed. Stat. Ann. (2d ed.) 1111.

An Act To pension widows and minor children of officers and enlisted men who served in the War with Spain, Philippine insurrection, or in China.]

[*Act of July 16, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Widows and minor children — War with Spain — Philippine insurrection — Chinese Boxer Rebellion.**] That from and after the passage of this Act if any volunteer officer or enlisted man who served ninety days or more in the Army, Navy, or Marine Corps of the United States, during the War with Spain or the Philippine insurrection, between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, service to be computed from date of enlistment to date of discharge, or any officer or enlisted man of the Regular Establishment who rendered ninety days or more actual military or naval service in the United States Army, Navy, or Marine Corps in the War with Spain or the Philippine insurrection between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, or as a participant in the Chinese Boxer rebellion campaign between June sixteenth, nineteen hundred, and October first, nineteen hundred, and who has been honorably discharged therefrom, has died or shall hereafter die leaving a widow without means of support other than her

daily labor, and an actual net income not exceeding \$250 per year, or leaving a minor child or children under the age of sixteen years, such widow shall upon due proof of her husband's death, without proving his death to be the result of his Army or Navy service, be placed on the pension roll from the date of the filing of her application therefor under this Act, at the rate of \$12 per month during her widowhood, and shall also be paid \$2 per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided*, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and shall commence from the date of application therefor after the passage of this Act: *Provided further*, That said widow shall have married said officer or enlisted man previous to the passage of this Act: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. [— *Stat. L.* —.]

SEC. 2. [Prosecution of claims — agents and attorneys — fees — withholding pension money — offenses] That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this Act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than \$10, which sum shall be payable only on the order of the Commissioner of Pensions; and any person who shall violate any of the provisions of this section, or shall wrongfully withhold from the pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every offense, be fined not exceeding \$500 or be imprisoned not exceeding one year, or both, in the discretion of the court. [— *Stat. L.* —.]

PERJURY

See PUBLIC LANDS.

PHILIPPINE ISLANDS

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27. *Review by United States Supreme Court of Final Judgments, etc.*, 605.
28. *Franchises, etc. — Eminent Domain — Involuntary Servitude*, 605.
29. *Salaries of Officials — Amount — Payment*, 606.
30. *Payment of Salaries of Certain Officials; etc.*, 606.
31. *Continuance of Non-Conflicting Laws*, 606.

Act of June 4, 1918, ch. —, 606.

Taxes Imposed by Philippine Legislature — Ratification, 606.

CROSS-REFERENCES

See *IMMIGRATION; INTERNAL REVENUE; NAVAL ACADEMY*.

..[SEC. 1.] [Acts of Philippine legislature — ratification — internal-revenue taxes—tonnage tax.] * * * That the internal-revenue taxes imposed by the Philippine Legislature under the law enacted by that body

on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed. [39 Stat. L. 286.]

This and the following paragraph of the text are from the Sundry Civil Appropriations Act of July 1, 1918, ch. 209.

See also the Act of June 4, 1918, ch. —, *infra*, p. 606.

[Tonnage taxes and light dues—exemption of vessels in ports of United States.] * * * Vessels owned by citizens of the Philippine Islands and documented as such by the government of said islands shall hereafter be exempt in ports of the United States from payment of tonnage taxes and light dues; and the Secretary of the Treasury is hereby authorized, upon certification by the Commissioner of Navigation, to refund, out of any money in the Treasury not otherwise appropriated, tonnage taxes and light dues imposed upon vessels owned and documented as aforesaid entering ports of the United States since August first, nineteen hundred and fourteen: *Provided*, That nothing contained herein shall be construed as exempting said vessels from any taxes or dues imposed by the government of the Philippine Islands. [39 Stat. L. 286.]

See the note to the preceding paragraph of the text.

An Act To declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

[Act of Aug. 29, 1916, ch. 416, 39 Stat. L. 545.]

[SEC. 1.] [Philippine Government Act—preamble—territory affected.]

Whereas it was never the intention of the people of the United States in the incipieney of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act and the name "The Philippines" as used in this Act shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the eleventh day of April, eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the seventh day of November, nineteen hundred. [39 Stat. L. 545.]

For the treaty of April 11, 1899, mentioned in the text, see 30 Stat. L. 1754.
For the treaty of Nov. 7, 1900, mentioned in the text, see 31 Stat. L. 1942.

SEC. 2. [Citizenship.] That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: *Provided*, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. [39 Stat. L. 546.]

SEC. 3. [Bill of rights.] That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety

may require it, in either of which events the same may be suspended by the President, or by the Governor General, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted nor shall the law of primogeniture ever be in force in the Philippines.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said islands shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That slavery shall not exist in said islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such. Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said islands shall be uniform.

That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only. [39 Stat. L. 546.]

SEC. 4. [Expenses incurred — liability of government.] That all expenses that may be incurred on account of the Government of the Philippines for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the islands, not, however, including defenses, barracks, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the Government of the Philippines. [39 Stat. L. 547.]

SEC. 5. [Statutory laws of United States — applicability.] That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act. [39 Stat. L. 547.]

SEC. 6. [Existing laws — continuance in force.] That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States. [39 Stat. L. 547.]

SEC. 7. [Legislative authority to amend, etc., existing laws.] That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines. [39 Stat. L. 547.]

SEC. 8. [General legislative authority — grant of.] That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act. [39 Stat. L. 547.]

SEC. 9. [Property and rights under control of government of Islands — legislative power — approval of President of United States.] That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine Legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: *Provided*, That upon the approval of such an act by the Governor General, it shall be by him forthwith transmitted to the President of the United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: *Provided further*, That where lands in the Philippine Islands have been or may be

reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said islands. [39 Stat. L. 547.]

For the Act of July 1, 1902, ch. 140, §§ 63, 64, mentioned in the text, see 5 Fed. Stat. L. 735; 7 Fed. Stat. Ann. (2d ed.) 1148.

SEC. 10. [Tariff laws — trade relations with United States — legislative authority — approval by President of United States.] That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: *Provided*, That tariff acts or acts amendatory to the tariff of the Philippine islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further*, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved. [39 Stat. L. 548.]

SEC. 11. [Export duties — taxes and assessments — bond issues.] That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit: *Provided, however*, That the entire indebtedness of the Philippine government created by the authority conferred herein shall not exceed at any one time the sum of \$15,000,000, exclusive of those obligations known as friar land bonds, nor that of any province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time. [39 Stat. L. 548.]

SEC. 12. [Legislature — creation — composition — powers.] That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature": *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority

herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature. [39 Stat. L. 548.]

SEC. 13. [Senate — membership — terms — qualifications.] That the members of the senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election. [39 Stat. L. 549.]

SEC. 14. [House of representatives — membership — terms — qualifications.] That the members of the house of representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the house of representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election: *Provided*, That the members of the present assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the house of representatives from their respective districts for the term expiring in nineteen hundred and nineteen. [39 Stat. L. 549.]

SEC. 15. [Electors — qualifications.] That at the first election held pursuant to this Act, the qualified electors shall be those having the qualifications of voters under the present law; thereafter and until otherwise provided by the Philippine Legislature herein provided for the qualifications of voters for senators and representatives in the Philippines and all officers elected by the people shall be as follows:

Every male person who is not a citizen or subject of a foreign power twenty-one years of age or over (except insane and feeble-minded persons and those convicted in a court of competent jurisdiction of an infamous offense since the thirteenth day of August, eighteen hundred and ninety-eight), who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting, and who is comprised within one of the following classes:

(a) Those who under existing law are legal voters and have exercised the right of suffrage.

(b) Those who own real property to the value of 500 pesos, or who annually pay 30 pesos or more of the established taxes.

(c) Those who are able to read and write either Spanish, English, or a native language. [39 Stat. L. 549.]

SEC. 16. [Senate districts—elections.] That the Philippine Islands shall be divided into twelve senate districts, as follows:

First district: Batanes, Cagayan, Isabela, Ilocos Norte, and Ilocos Sur.

Second district: La Union, Pangasinan, and Zambales.

Third district: Tarlac, Nueva, Ecija, Pampanga, and Bulacan.

Fourth district: Bataan, Rizal, Manila, and Laguna.

Fifth district: Batangas, Mindoro, Tayabas, and Cavite.

Sixth district: Sorsogon, Albay, and Ambos Camarines.

Seventh district: Iliolo and Capiz.

Eighth district: Negros Occidental, Negros Oriental, Antique, and Palawan.

Ninth district: Leyte and Samar.

Tenth district: Cebu.

Eleventh district: Surigao, Misamis, and Bohol.

Twelfth district: The Mountain Province, Baguio, Nueva Vizcaya, and the Department of Mindanao and Sulu.

The representative districts shall be the eighty-one now provided by law, and three in the Mountain Province, one in Nueva Vizcaya, and five in the Department of Mindanao and Sulu.

The first election under the provisions of this Act shall be held on the first Tuesday of October, nineteen hundred and sixteen, unless the Governor General in his discretion shall fix another date not earlier than thirty nor later than sixty days after the passage of this Act: *Provided*, That the Governor General's proclamation shall be published at least thirty days prior to the date fixed for the election, and there shall be chosen at such election one senator from each senate district for a term of three years and one for six years. Thereafter one senator from each district shall be elected from each senate district for a term of six years: *Provided*, That the Governor General of the Philippine Islands shall appoint, without the consent of the senate and without restriction as to residence, senators and representatives who will, in his opinion, best represent the senate district and those representative districts which may be included in the territory not now represented in the Philippine Assembly: *Provided further*, That thereafter elections shall be held only on such days and under such regulations as to ballots, voting, and qualifications of electors as may be prescribed by the Philippine Legislature, to which is hereby given authority to redistrict the Philippine Islands and modify, amend, or repeal any provision of this section, except such as refer to appointive senators and representatives. [39 Stat. L. 549.]

SEC. 17. [Terms of office—vacancies.] That the terms of office of elective senators and representatives shall be six and three years, respectively, and shall begin on the date of their election. In case of vacancy

among the elective members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred. Senators and representatives appointed by the Governor General shall hold office until removed by the Governor General. [39 Stat. L. 550.]

SEC. 18. [Senate and House as judges of elections, etc.— power to expel member — organization — sessions — compensation of members — privilege from arrest — eligibility to other offices.] That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns and qualifications of their elective members, and each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member. Both houses shall convene at the capitol on the sixteenth day of October next following the election and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. A majority of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. The legislature shall hold annual sessions, commencing on the sixteenth day of October, or, if the sixteenth day of October be a legal holiday, then on the first day following which is not a legal holiday, in each year. The legislature may be called in special session at any time by the Governor General for general legislation, or for action on such specific subjects as he may designate. No special session shall continue longer than thirty days, and no regular session shall continue longer than one hundred days, exclusive of Sundays. The legislature is hereby given the power and authority to change the date of the commencement of its annual sessions.

The senators and representatives shall receive an annual compensation for their services, to be ascertained by law, and paid out of the treasury of the Philippine Islands. The senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term. [39 Stat. L. 550.]

SEC. 19. [Journal of houses of legislature — approval of legislation.] That each house of the legislature shall keep a journal of its proceedings and, from time to time, publish the same; and the yeas and nays of the members of either house, on any question, shall, upon demand of one-fifth of those present, be entered on the journal, and every bill and joint

resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor General. If he approve the same, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that house it shall be sent to the Governor General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor General, so stating, and it shall not become a law: *Provided*, That if any bill or joint resolution shall not be returned by the Governor General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor General within thirty days after adjournment: *Provided further*, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for his approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid. [39 Stat. L. 551.]

SEC. 20. [Resident commissioners to United States.] That at the first meeting of the Philippine Legislature created by this Act and triennially thereafter there shall be chosen by the legislature two Resident Commissioners to the United States, who shall hold their office for a term of three years beginning with the fourth day of March following their election, and who shall be entitled to an official recognition as such by all departments upon presentation to the President of a certificate of election by the

Governor General of said islands. Each of said Resident Commissioners shall, in addition to the salary and the sum in lieu of mileage now allowed by law, be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to the Members of the House of Representatives of the United States, to be paid out of the Treasury of the United States, and the franking privilege allowed by law to Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide elector of said islands and who does not owe allegiance to the United States and who is not more than thirty years of age and who does not read and write the English language. The present two Resident Commissioners shall hold office until the fourth of March, nineteen hundred and seventeen. In case of vacancy in the position of Resident Commissioner caused by resignation or otherwise, the Governor General may make temporary appointments until the next meeting of the Philippine Legislature, which shall then fill such vacancy; but the Resident Commissioner thus elected shall hold office only for the unexpired portion of the term wherein the vacancy occurred. [39 Stat. L. 552.]

SEC. 21. [Governor General.] That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it,

suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided*, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President. [39 Stat. L. 552.]

SEC. 22. [Executive departments — Bureau of non-Christian tribes.] That, except as provided otherwise in this Act, the executive departments of the Philippine Government shall continue as now authorized by law until otherwise provided by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided*, That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the Bureau of Non-Christian tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives. [39 Stat. L. 553.]

SEC. 23. [Vice governor — department of interior — vacancies in office of governor general or vice governor.] That there shall be appointed by the President, by and with the advice and consent of the Senate of the United States, a vice governor of the Philippine Islands, who shall have all the powers of the Governor General in the case of a vacancy or temporary removal, resignation, or disability of the Governor General, or in case of his temporary absence; and the said vice governor shall be the head of the executive department, known as the department of public instruction, which shall include the bureau of education and the bureau of health, and he may be assigned such other executive duties as the Governor General may designate.

Other bureaus now included in the department of public instruction shall until otherwise provided by the Philippine Legislature, be included in the department of the interior.

The President may designate the head of an executive department of the Philippine government to act as Governor General in the case of a vacancy, the temporary removal, resignation, or disability of the Governor General and the vice governor, or their temporary absence, and the head of the department thus designated shall exercise all the powers and perform all the duties of the Governor General during such vacancy, disability, or absence. [39 *Stat. L.* 553.]

SEC. 24. [Auditor — deputy auditor — appointment — powers — duties — decisions.] That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with laws and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

There shall be a deputy auditor appointed in the same manner as the auditor. The deputy auditor shall sign such official papers as the auditor may designate and perform such other duties as the auditor may prescribe, and in case of the death, resignation, sickness, or other absence of the auditor from his office, from any cause, the deputy auditor shall have charge of such office. In case of the absence from duty, from any cause, of both the auditor and the deputy auditor, the Governor General may designate an assistant, who shall have charge of the office.

The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor General he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the method of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided*, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of

the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various Provinces and municipalities, and make such other reports as may be required of him by the Governor General or the Secretary of War.

In the execution of their duties, the auditor and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law. [39 Stat. L. 553.]

SEC. 25. [Appeal from action of auditor.] That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive. [39 Stat. L. 554.]

SEC. 26. [Courts — jurisdiction — judges.] That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Governor General, by and with the advice and consent of the Philippine Senate: *Provided*, That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by Act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination. [39 Stat. L. 555.]

SEC. 27. [Review by United States Supreme Court of final judgments, etc.] That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds \$25,000, or in which the title or possession of real estate exceeding in value the sum of \$25,000, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States. [39 Stat. L. 555.]

SEC. 28. [Franchises, etc.— eminent domain — involuntary servitude.] That the government of the Philippine Islands may grant franchises and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said Provinces or municipalities: *Provided*, That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted, and that no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States, and that lands or right of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and rights under which they were granted or upon their revocation or repeal. That all franchises or rights granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the Province or municipality within which such franchises are granted and exercised: *Provided further*, That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving any grant, franchise, or concession from the govern-

ment of said islands, to use, employ, or contract for the labor of persons held in involuntary servitude; and any person, company or corporation so violating the provisions of this Act shall forfeit all charters, grants, or franchises for doing business in said islands, in an action or proceeding brought for that purpose in any court of competent jurisdiction by any officer of the Philippine government, or on the complaint of any citizen of the Philippines, under such regulations and rules as the Philippine Legislature shall prescribe, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not more than \$10,000. [39 Stat. L. 555.]

SEC. 29. [Salaries of officials — amount — payment.] That, except as in this Act otherwise provided, the salaries of all the officials of the Philippines not appointed by the President, including deputies, assistants, and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine Legislature; and if the legislature shall fail to make an appropriation for such salaries, the salaries so fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of the Philippines appointed as herein provided by the President shall also be paid out of the revenues of the Philippines. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The Governor General, \$18,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of the Philippines, with the furniture and effects therein, free of rental; vice governor, \$10,000; chief justice of the supreme court, \$8,000; associate justices of the supreme court, \$7,500 each; auditor, \$6,000; deputy auditor, \$3,000. [39 Stat. L. 556.]

SEC. 30. [Payment of salaries of certain officials, etc.] That the provisions of the foregoing section shall not apply to provincial and municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the Provinces and municipalities, shall be paid out of the provincial and municipal revenues in such manner as the Philippine Legislature shall provide. [39 Stat. L. 556.]

SEC. 31. [Continuance of non-conflicting laws.] That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect. [39 Stat. L. 556.]

[Taxes imposed by Philippine Legislature — ratification.] * * * The taxes imposed by the Philippine Legislature in section fourteen hundred and fifty-nine of the act numbered twenty-seven hundred and eleven, enacted by that body on March tenth, nineteen hundred and seventeen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is legalized, ratified, and confirmed hereby as fully to all intents and purposes as if the same by prior Act of Congress specifically had been authorized and directed. [— Stat. L. —.]

This is from the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —, See also the Act of July 1, 1916, ch. 209, § 1, *supra*, p. 591.

PORTO RICO

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That the provisions of this Act shall apply to the Island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Porto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid.

*[39 Stat. L. 951.]***BILL OF RIGHTS.**

SEC. 2. [Enumeration.] That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, whenever during such period the necessity for such suspension shall exist.

That no ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

Nothing contained in this Act shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust under the government of Porto Rico shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State, or any officer thereof.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

That slavery shall not exist in Porto Rico.

That involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall not exist in Porto Rico.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed, and that no political or religious test other than an oath to support the Constitution of the United States and the laws of Porto Rico shall be required as a qualification to any office or public trust under the government of Porto Rico.

That no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, or for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of Porto Rico. Contracting of polygamous or plural marriages hereafter is prohibited.

That one year after the approval of this Act and thereafter it shall be unlawful to import, manufacture, sell, or give away, or to expose for sale or gift any intoxicating drink or drug: *Provided*, That the legislature may authorize and regulate importation, manufacture, and sale of said liquors and drugs for medicinal, sacramental, industrial, and scientific uses only. The penalty for violations of this provision with reference to intoxicants shall be a fine of not less than \$25 for the first offense, and for second and subsequent offenses a fine of not less than \$50 and imprisonment for not less than one month or more than one year: *And provided further*, That at any general election within five years after the approval of this Act this provision may, upon petition of not less than ten per centum of the qualified electors of Porto Rico, be submitted to a vote of the qualified electors of Porto Rico, and if a majority of all the qualified electors of Porto Rico voting upon such question shall vote to repeal this provision it shall thereafter not be in force and effect; otherwise it shall be in full force and effect.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law, and on warrant drawn by the proper officer in pursuance thereof.

That the rule of taxation in Porto Rico shall be uniform.

That all money derived from any tax levied or assessed for a special purpose shall be treated as a special fund in the Treasury and paid out for such purpose only except upon the approval of the President of the United States.

That eight hours shall constitute a day's work in all cases of employment of laborers and mechanics by and on behalf of the government of the island on public works, except in cases of emergency.

That the employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited. [39 Stat. L. 951.]

SEC. 3. [Export duties — taxes and assessments — internal revenue — public indebtedness — bonds — exemption from taxation.] That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law, and to protect the public credit: *Provided, however*, That no public indebtedness of Porto Rico or of any subdivision or municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property, and all bonds issued by the government of Porto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the government of Porto Rico or of any political or municipal subdivision thereof, or by any State, or by any county, municipality, or other municipal subdivision of any State or Territory of the United States, or by the District of Columbia. In computing the indebtedness of the people of Porto Rico, bonds issued by the people of Porto Rico secured by an equivalent amount of bonds of municipal

corporations or school boards of Porto Rico shall not be counted. [39 Stat. L. 953.]

SEC. 4. [Capital.] That the capital of Porto Rico shall be at the city of San Juan, and the seat of government shall be maintained there. [39 Stat. L. 953.]

SEC. 5. [Citizenship.] That all citizens of Porto Rico, as defined by section seven of the Act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other other purposes," and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this Act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, _____, being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the Act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of by transmitting a declaration, under oath, in the form herein provided within six months of the taking effect of this Act to the executive secretary of Porto Rico: *And provided further*, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this Act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States. [39 Stat. L. 953.]

For the Act of April 12, 1900, ch. 191, § 7, mentioned in the text, see 5 Fed. Stat. Ann. 765; 7 Fed. Stat. Ann. (2d ed.) 1263.

SEC. 6. [Expenses for government, etc.—payment.] That all expenses that may be incurred on account of the government of Porto Rico for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the island, not, however, including defenses, barracks, harbors, lighthouses, buoys, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the treasurer of Porto Rico out of the revenue in his custody. [39 Stat. L. 954.]

SEC. 7. [Property of United States and Porto Rico — control and disposition.] That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in the treaty of peace entered into on the tenth day of December, eighteen hundred and ninety-eight, in any public bridges, road houses, water powers, highways, unavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Porto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not heretofore reserved by the United States for public purposes, is hereby placed under the control of the government of Porto Rico, to be administered for the benefit of the people of Porto Rico; and the Legislature of Porto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable: *Provided*, That the President may from time to time, in his discretion, convey to the people of Porto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico as in his opinion are no longer needed for purposes of the United States. And he may from time to time accept by legislative grant from Porto Rico any lands, buildings, or other interests or property which may be needed for public purposes by the United States. [39 Stat. L. 954.]

SEC. 8. [Waters and islands — control and administration — former Act repealed.] That the harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Porto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes, be, and the same are hereby, placed under the control of the government of Porto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: *Provided*, That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters: *Provided further*, That nothing in this Act contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers heretofore lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said islands and its adjacent island by the Secretary of War or other authorized officer or agent of the United States: *And provided further*, That the Act of Congress approved June eleventh, nineteen hundred and six, entitled "An Act to empower the Secretary of War, under certain restrictions, to authorize the construction, extension, and maintenance of wharves, piers, and other structures on lands underlying harbor areas in navigable streams and bodies of water in or surrounding Porto Rico and the islands adjacent thereto," and all other laws and parts of laws in conflict with this section be, and the same are hereby, repealed. [39 Stat. L. 954.]

For the Act of June 11, 1906, ch. 3075, repealed by this section, see 1909 Supp. Fed. Stat. Ann. 516; 7 Fed. Stat. Ann. (2d ed.) 1282.

SEC. 9. [Statutory laws of United States — applicability to Porto Rico — taxes under internal revenue laws — disposition.] That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: *Provided, however,* That hereafter all taxes collected under the internal-revenue laws of the United States on articles produced in Porto Rico and transported to the United States, or consumed in the island shall be covered into the treasury of Porto Rico. [39 Stat. L. 954.]

SEC. 10. [Judicial process — criminal prosecutions by whom conducted — officials — qualifications.] That all judicial process shall run in the name of “United States of America, ss, the President of the United States,” and all penal or criminal prosecutions in the local courts shall be conducted in the name and by the authority of “The People of Porto Rico”; and all officials shall be citizens of the United States, and, before entering upon the duties of their respective offices, shall take an oath to support the Constitution of the United States and the laws of Porto Rico. [39 Stat. L. 954.]

SEC. 11. [Reports to United States — designation of department in United States to handle Porto Rican matters.] That all reports required by law to be made by the governor or heads of departments to any official of the United States shall hereafter be made to an executive department of the Government of the United States to be designated by the President, and the President is hereby authorized to place all matters pertaining to the government of Porto Rico in the jurisdiction of such department. [39 Stat. L. 955.]

EXECUTIVE DEPARTMENT.

SEC. 12. [Governor — appointment, etc.— duties.] That the supreme executive power shall be vested in an executive officer, whose official title shall be “The Governor of Porto Rico.” He shall be appointed by the President, by and with the advice and consent of the Senate, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The governor shall reside in Porto Rico during his official incumbency and maintain his office at the seat of government. He shall have general supervision and control of all the departments and bureaus of the government in Porto Rico, so far as is not inconsistent with the provisions of this Act, and shall be commander in chief of the militia. He may grant pardons and reprieves and remit fines and forfeitures for offenses against the laws of Porto Rico, and respites for all offenses against the laws of the United States until the decision of the President can be ascertained, and may veto any legislation enacted as hereinafter provided. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Porto Rico and of the United States applicable to Porto Rico, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the island, or summon the posse comitatus, or call

out the militia to prevent or suppress lawless violence, invasion, insurrection, or rebellion, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the island, or any part thereof, under martial law until communication can be had with the President and the President's decision therein made known. He shall annually, and at such other times as he may be required, make official report of the transactions of the government of Porto Rico to the executive department of the Government of the United States to be designated by the President as herein provided, and his said annual report shall be transmitted to Congress, and he shall perform such additional duties and functions as may in pursuance of law be delegated to him by the President. [39 Stat. L. 955.]

SEC. 13. [Executive departments — creation — enumeration — council — duties.] That the following executive departments are hereby created: A department of justice, the head of which shall be designated as the attorney general; a department of finance, the head of which shall be designated as the treasurer; a department of interior, the head of which shall be designated as the commissioner of the interior; a department of education, the head of which shall be designated as the commissioner of education; a department of agriculture and labor, the head of which shall be designated as the commissioner of agriculture and labor; and a department of health, the head of which shall be designated as the commissioner of health. The attorney general and the commissioner of education shall be appointed by the President, by and with the advice and consent of the Senate of the United States, to hold office for four years and until their successors are appointed and qualified, unless sooner removed by the President. The heads of the four remaining departments shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. The heads of departments appointed by the governor shall hold office for the term of four years and until their successors are appointed and qualified, unless sooner removed by the governor.

Heads of departments shall reside in Porto Rico during their official incumbency, and those appointed by the governor shall have resided in Porto Rico for at least one year prior to their appointment.

The heads of departments shall collectively form a council to the governor, known as the executive council. They shall perform under the general supervision of the governor the duties hereinafter prescribed, or which may hereafter be prescribed by law and such other duties, not inconsistent with law, as the governor, with the approval of the President, may assign to them; and they shall make annual and such other reports to the governor as he may require, which shall be transmitted to the executive department of the Government of the United States to be designated by the President as herein provided: *Provided*, That the duties herein imposed upon the heads of departments shall not carry with them any additional compensation. [39 Stat. L. 955.]

SEC. 14. [Attorney general — duties.] That the attorney general shall have charge of the administration of justice in Porto Rico; he shall be the legal adviser of the governor and the heads of departments and shall be

responsible for the proper representation of the people of Porto Rico or its duly constituted officers in all actions and proceedings, civil or criminal, in the Supreme Court of Porto Rico in which the people of Porto Rico shall be interested or a party, and he may, if directed by the governor or if in his judgment the public interest requires it, represent the people of Porto Rico or its duly constituted officers in any other court or before any other officer or board in any action or proceeding, civil or criminal, in which the people of Porto Rico may be a party or be interested. He shall also perform such other duties not inconsistent herewith as may be prescribed by law. [39 Stat. L. 956.]

SEC. 15. [Treasurer — qualification — duties — depositaries of government.] That the treasurer shall give bond, approved as to form by the attorney general of Porto Rico, in such sum as the legislature may require, not less, however, than the sum of \$125,000, with surety or sureties approved by the governor, and he shall collect and be the custodian of public funds, and shall disburse the same in accordance with law, on warrants signed by the auditor and countersigned by the governor, and perform such other duties as may be provided by law. He may designate banking institutions in Porto Rico and the United States as depositaries of the government of Porto Rico, subject to such conditions as may be prescribed by the governor, after they have filed with him satisfactory evidence of their sound financial condition and have deposited bonds of the United States or of the government of Porto Rico or other security satisfactory to the governor in such amounts as may be indicated by him; and no banking institution shall be designated a depository of the government of Porto Rico until the foregoing conditions have been complied with. Interest on deposits shall be required and paid into the treasury. [39 Stat. L. 956.]

SEC. 16. [Commissioner of interior — duties.] That the commissioner of the interior shall superintend all works of a public nature, have charge of all public buildings, grounds, and lands, except those belonging to the United States, and shall execute such requirements as may be imposed by law with respect thereto, and perform such other duties as may be prescribed by law. [39 Stat. L. 956.]

SEC. 17. [Commissioner of education — duties.] That the commissioner of education shall superintend public instruction throughout Porto Rico; all proposed disbursements on account thereof must be approved by him, and all courses of study shall be prepared by him, subject to disapproval by the governor if he desires to act. He shall prepare rules governing the selection of teachers, and appointments of teachers by local school boards shall be subject to his approval, and he shall perform such other duties, not inconsistent with this Act, as may be prescribed by law. [39 Stat. L. 956.]

SEC. 18. [Commissioner of agriculture and labor — duties.] That the commissioner of agriculture and labor shall have general charge of such **bureaus and branches of government** as have been or shall be legally constituted for the study, advancement, and benefit of agricultural and other

industries, the chief purpose of this department being to foster, promote, and develop the agricultural interests and the welfare of the wage earners of Porto Rico, to improve their working conditions, and to advance their opportunities for profitable employment, and shall perform such other duties as may be prescribed by law. [39 Stat. L. 957.]

SEC. 19. [Commissioner of health — duties.] That the commissioner of health shall have general charge of all matters relating to public health, sanitation, and charities, except such as relate to the conduct of maritime quarantine, and shall perform such other duties as may be prescribed by law. [39 Stat. L. 957.]

SEC. 20. [Auditor — appointment — salary — duties — decisions.] That there shall be appointed by the President an auditor, at an annual salary of \$5,000, for a term of four years and until his successor is appointed and qualified, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts, from whatever source, of the government of Porto Rico and of the municipal governments of Porto Rico, including public trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of Porto Rico or the municipalities or dependencies thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

In case of vacancy or of the absence from duty, from any cause, of the auditor, the Governor of Porto Rico may designate an assistant, who shall have charge of the office.

The jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the governor, he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the methods of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided*, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by the law upon the several auditors of the United States and the Comptroller of the United States Treasury, and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted, the auditors shall submit to the governor

an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various municipalities, and make such other reports as may be required of him by the governor or the head of the executive department of the Government of the United States, to be designated by the President as herein provided.

In the execution of his duties the auditor is authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses.

The office of the auditor shall be under the general supervision of the governor and shall consist of the auditor and such necessary assistants as may be prescribed by law. [39 Stat. L. 957.]

SEC. 21. [Appeal from decision of auditor.] That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the governor, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision. The decision of the governor in such case shall be final, subject to such right of action as may be otherwise provided by law. [39 Stat. L. 958.]

SEC. 22. [Executive secretary — appointment, salary, etc.— duties — vacancy.] That there shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico, an executive secretary at an annual salary of \$4,000, who shall record and preserve the minutes and proceedings of the public service commission hereinafter provided for and the laws enacted by the legislature and all acts and proceedings of the governor, and promulgate all proclamations and orders of the governor and all laws enacted by the legislature, and until otherwise provided by the legislature of Porto Rico perform all the duties of secretary of Porto Rico as now provided by law, except as otherwise specified in this Act, and perform such other duties as may be assigned to him by the Governor of Porto Rico. In the event of a vacancy in the office, or the absence, illness, or temporary disqualification of such officer, the governor shall designate some officer or employee of the government to discharge the functions of said office during such vacancy, absence, illness, or temporary disqualification. [39 Stat. L. 958.]

SEC. 23. [Copies of laws enacted by legislature — transmission to United States government.] That the Governor of Porto Rico, within sixty days after the end of each session of the legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn, transmit the same to the Congress of the United States, copies of all laws enacted during the session. [39 Stat. L. 958.]

SEC. 24. [Vacancy in office of governor — how filled.] That the President may from time to time designate the head of an executive department

of Porto Rico to act as governor in the case of a vacancy, the temporary removal, resignation, or disability of the governor, or his temporary absence, and the head of the department thus designated shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence. [39 Stat. L. 958.]

LEGISLATIVE DEPARTMENT.

SEC. 25. [Legislative powers — where vested.] That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated “the Legislature of Porto Rico.” [39 Stat. L. 958.]

SEC. 26. [Senate — number and term of members — qualifications — powers.] That the Senate of Porto Rico shall consist of nineteen members elected for terms of four years by the qualified electors of Porto Rico. Each of the seven senatorial districts defined as hereinafter provided shall have the right to elect two senators, and in addition thereto there shall be elected five senators at large. No person shall be a member of the Senate of Porto Rico who is not over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of Porto Rico for at least two consecutive years, and, except in the case of senators at large, an actual resident of the senatorial district from which chosen for a period of at least one year prior to his election. Except as herein otherwise provided, the Senate of Porto Rico shall exercise all of the purely legislative powers and functions heretofore exercised by the Executive Council, including confirmation of appointments; but appointments made while the senate is not in session shall be effective either until disapproved or until the next adjournment of the senate for the session. In electing the five senators at large each elector shall be permitted to vote for but one candidate, and the five candidates receiving the largest number of votes shall be declared elected. [39 Stat. L. 958.]

SEC. 27. [House of Representatives — number and terms of members — qualifications.] That the House of Representatives of Porto Rico shall consist of thirty-nine members elected quadrennially by the qualified electors of Porto Rico, as hereinafter provided. Each of the representative districts hereinafter provided for shall have the right to elect one representative, and in addition thereto there shall be elected four representatives at large. No person shall be a member of the house of representatives who is not over twenty-five years of age, and who is not able to read and write either the Spanish or English language, except in the case of representative at large, who has not been a bona fide resident of the district from which elected for at least one year prior to his election. In electing the four representatives at large, each elector shall be permitted to vote for but one candidate and the four candidates receiving the largest number of votes shall be elected. [39 Stat. L. 959.]

SEC. 28. [**Election districts.**] That for the purpose of elections hereafter to the legislature the island of Porto Rico shall be divided into thirty-five representative districts, composed of contiguous and compact territory and established, so far as practicable, upon the basis of equal population. The division into and the demarcation of such districts shall be made by the Executive Council of Porto Rico. Division of districts shall be made as nearly as practicable to conform to the topographical nature of the land, with regard to roads and others means of communication and to natural barriers. Said Executive Council shall also divide the island of Porto Rico into seven senatorial districts, each composed of five contiguous and compact representative districts. They shall make their report within thirty days after the approval of this Act, which report, when approved by the governor, shall be final. [39 Stat. 959.]

SEC. 29. [**Elections — time of holding — officers chosen.**] That the next election in Porto Rico shall be held in the year nineteen hundred and seventeen upon the sixteenth day of July. At such election there shall be chosen senators, representatives, a Resident Commissioner to the United States, and two public-service commissioners, as herein provided. Thereafter the elections shall be held on the first Tuesday after the first Monday in November, beginning with the year nineteen hundred and twenty, and every four years thereafter, and the terms of office of all municipal officials who have heretofore been elected and whose terms would otherwise expire at the beginning of the year nineteen hundred and nineteen are hereby extended until the officials who may be elected to fill such offices in nineteen hundred and twenty shall have been duly qualified. *Provided, however,* That nothing herein contained shall be construed to limit the right of the Legislature of Porto Rico at any time to revise the boundaries of senatorial and representative districts and of any municipality, or to abolish any municipality and the officers provided therefor. [39 Stat. L. 959.]

SEC. 30. [**Senators and representatives — term of office — vacancies — appointment to other office.**] That the term of office of senators and representatives chosen by the first general election shall be until January first, nineteen hundred and twenty-one, and the terms of office of senators and representatives chosen at subsequent elections shall be four years from the second of January following their election. In case of vacancy among the members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred, under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred, and no senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under the government of Porto Rico, nor be appointed to any office created by Act of the legislature during the time for which he shall have been elected until two years after his term of office shall have expired. [39 Stat. L. 959.]

SEC. 31. [**Compensation of members.**] That members of the Senate and House of Representatives of Porto Rico shall receive compensation at the

rate of \$7 per day for the first ninety days of each regular session and \$1 per day for each additional day of such session while in session, and mileage for each session at the rate of 10 cents per kilometer for each kilometer actually and necessarily traveled in going from their legislative districts to the capital and therefrom to their place of residence in their districts by the usual routes of travel. [39 Stat. L. 960.]

SEC. 32. [Senate and house as sole judges, etc., of qualifications of members, etc.—time and place of convening—organization.] That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their members, and they shall have and exercise all the powers with respect to the conduct of their proceedings that usually pertain to parliamentary legislative bodies. Both houses shall convene at the capital on the second Monday in February following the next election, and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. [39 Stat. L. 960.]

SEC. 33. [Regular and special sessions.] That the first regular session of the Legislature of Porto Rico, provided for by this Act, shall convene on the twenty-eighth day after the first election provided for herein, and regular sessions of the legislature shall be held biennially thereafter, convening on the second Monday in February of the year nineteen hundred and nineteen, and on the second Monday in February of each second year thereafter. The governor may call special sessions of the legislature or of the senate at any time when in his opinion the public interest may require it, but no special session shall continue longer than ten days, not including Sundays and holidays, and no legislation shall be considered at such session other than that specified in the call, and he shall call the senate in special session at least once each year on the second Monday in February of those years in which a regular session of the legislature is not provided for. [39 Stat. L. 960.]

SEC. 34. [Powers and duties of legislature—procedure—bribery of members—appropriations—payment.] That the enacting clause of the laws shall be as to acts, "Be it enacted by the Legislature of Porto Rico," and as to joint resolutions, "Be it resolved by the Legislature of Porto Rico." Except as hereinafter provided, bills and joint resolutions may originate in either house. The governor shall submit at the opening of each regular session of the legislature a budget of receipts and expenditures, which shall be the basis of the ensuing biennial appropriation bill. No bill shall become a law until it be passed in each house by a majority yea-and-nay vote of all of the members belonging to such house and entered upon the journal and be approved by the governor within ten days thereafter. If when a bill that has been passed is presented to the governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members of that house shall agree to pass the same it shall be sent, together with the

objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that house, it shall be sent to the governor, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same he shall return it to the governor so stating, and it shall not become a law: *Provided*, That the President of the United States shall approve or disapprove an Act submitted to him under the provisions of this section within ninety days from and after its submission for his approval; and if not approved within such time it shall become a law the same as if it had been specifically approved. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the governor within thirty days after receipt by him; otherwise it shall not be a law. All laws enacted by the Legislature of Porto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item; and until the legislature shall act in such behalf the treasurer may, with the advice of the governor, make the payments necessary for the purposes aforesaid.

Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time publish the same, and the yeas and nays on any question shall, on the demand of one-fifth of the members present, be entered on the journal.

The sessions of each house and of the committees of the whole shall be open.

Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

No laws shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

No act of the legislature except the general appropriation bills for the expenses of the government shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislature shall by a vote of two-

thirds of all the members elected to each house otherwise direct. No bill, except the general appropriation bill for the expenses of the government only, introduced in either house of the legislature after the first forty days of the session, shall become a law.

No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members: *Provided*, That either house may by a majority vote discharge a committee from the consideration of a measure and bring it before the body for consideration.

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house; and no payment shall be made for services to the legislature from the treasury, or be in any way authorized to any person, except to an acting officer or employee elected or appointed in pursuance of law.

No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made.

Except as otherwise provided in this Act, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment, nor permit any officer or employee to draw compensation for more than one office or position.

All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments, as in case of other bills.

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Every order, resolution, or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Any person who shall, directly, or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the legislature to influence

him in the performance of any of his public or official duties, shall be deemed guilty of bribery, and be punished by a fine not exceeding \$5,000, or imprisonment not exceeding five years, or both.

The offense of corrupt solicitation of members of the legislature, or of public officers of Porto Rico, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

In case the available revenues of Porto Rico for any fiscal year, including available surplus in the insular treasury, are insufficient to meet all the appropriations made by the legislature for such year, such appropriations shall be paid in the following order, unless otherwise directed by the governor:

First class. The ordinary expenses of the legislative, executive, and judicial departments of the State government, and interest on any public debt, shall first be paid in full.

Second class. Appropriations for all institutions, such as the penitentiary, insane asylum, industrial school, and the like, where the inmates are confined involuntarily, shall next be paid in full.

Third class. Appropriations for education and educational and charitable institutions shall next be paid in full.

Fourth class. Appropriations for any other officer or officers, bureaus or boards, shall next be paid in full.

Fifth class. Appropriations for all other purposes shall next be paid.

That in case there are not sufficient revenues for any fiscal year, including available surplus in the insular treasury, to meet in full the appropriations of said year for all of the said classes of appropriations, then said revenues shall be applied to the classes in the order above named, and if, after the payment of the prior classes in full, there are not sufficient revenues for any fiscal year to pay in full the appropriations for that year for the next class, then, in that event, whatever there may be to apply on account of appropriations for said class shall be distributed among said appropriations pro rata according as the amount of each appropriation of that class shall bear to the total amount of all of said appropriations for that class for such fiscal year.

No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the Government of Porto Rico during any fiscal year shall exceed the total revenue then provided for by law and applicable for such appropriation or expenditure, including any available surplus in the treasury, unless the legislature making such appropriation shall provide for levying a sufficient tax to pay such appropriation or expenditure within such fiscal year. [39 Stat. L. 960.]

SEC. 35. [Qualified electors.] That at the first election held pursuant to this Act the qualified electors shall be those having the qualifications of voters under the present law. Thereafter voters shall be citizens of the United States twenty-one years of age or over and have such additional qualifications as may be prescribed by the legislature of Porto Rico: *Provided*: That no property qualification shall ever be imposed upon or required of any voter. [39 Stat. L. 963.]

SEC. 36. [Resident commissioner to United States.] That the qualified electors of Porto Rico shall at the next general election choose a Resident Commissioner to the United States, whose term of office shall begin on the date of the issuance of his certificate of election and shall continue until the fourth of March, nineteen hundred and twenty-one. At each subsequent election, beginning with the year nineteen hundred and twenty, the qualified electors of Porto Rico shall choose a Resident Commissioner to the United States, whose term of office shall be four years from the fourth of March following such general election, and who shall be entitled to receive official recognition as such Commissioner by all of the departments of the Government of the United States, upon presentation, through the Department of State, of a certificate of election of the Governor of Porto Rico. The Resident Commissioner shall receive a salary, payable monthly by the United States, of \$7,500 per annum. Such Commissioner shall be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to Members of the House of Representatives of the United States; and he shall be allowed the sum of \$500 as mileage for each session of the House of Representatives and the franking privilege granted Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide citizen of the United States and who is not more than twenty-five years of age, and who does not read and write the English language. In case of a vacancy in the office of Resident Commissioner by death, resignation, or otherwise, the governor, by and with the advice and consent of the senate, shall appoint a Resident Commissioner to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified. [39 Stat. L. 963.]

SEC. 37. [Legislative authority.] That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act. No executive department not provided for in this Act shall be created by the legislature, but the legislature may consolidate departments, or abolish any department, with the consent of the President of the United States. [39 Stat. L. 964.]

SEC. 38. [Franchises, rights and privileges — public service commission — interstate commerce — carriers.] That all grants of franchises, rights, and privileges of a public or quasi public nature shall be made by a public-service commission, consisting of the heads of executive departments, the auditor, and two commissioners to be elected by the qualified voters at the first general election to be held under this Act, and at each subsequent general election thereafter. The terms of said elective commissioners elected at the first general election shall commence on the twenty-eighth day following the said general election, and the terms of the said elective

commissioners elected at each subsequent general election shall commence on the second day of January following their election; they shall serve for four years and until their successors are elected and qualified. Their compensation shall be \$8 for each day's attendance on the sessions of the commission, but in no case shall they receive more than \$400 each during any one year. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council. Franchises, rights, and privileges granted by the said commission shall not be effective until approved by the governor, and shall be reported to Congress, which hereby reserves the power to annul or modify the same.

The interstate-commerce Act and the several amendments made or to be made thereto, the safety-appliance Acts and the several amendments made or to be made thereto, and the Act of Congress entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities," approved March first, nineteen hundred and thirteen, shall not apply to Porto Rico.

The Legislative Assembly of Porto Rico is hereby authorized to enact laws relating to the regulation of the rates, tariffs, and service of public carriers by rail in Porto Rico, and the Public-Service Commission hereby created shall have power to enforce such laws under appropriate regulation. [39 Stat. L. 964.]

For the Interstate Commerce Act and the several amendments thereto, mentioned in the text, see 3 Fed. Stat. Ann. 808 and Supplements, and 4 Fed. Stat. Ann. (2d ed.) 331.

For the Safety Appliance Acts and the various amendments thereto, mentioned in the text, see 6 Fed. Stat. Ann. 718 and Supplements, and 8 Fed. Stat. Ann. (2d ed.) 1155.

For the Act of March 1, 1913, ch. 92, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 204; 4 Fed. Stat. Ann. (2d ed.) 495. This Act amended the Interstate Commerce Act by adding thereto a new section to be known as section 19a.

SEC. 39. [Franchises and privileges — grants as subject to amendment.]

That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and

seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres. [39 Stat. L. 964.]

For the Res. of May 1, 1900, No. 23, section 3, mentioned in the text, see 5 Fed. Stat. Ann. 776; 7 Fed. Stat. Ann. (2d ed.) 1278.

JUDICIAL DEPARTMENT.

SEC. 40. [Courts — jurisdiction — procedure — appointment of judges.]

That the judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law: *Provided, however,* That the chief justice and associate justices of the supreme court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico. [39 Stat. L. 965.]

SEC. 41. [United States District Court — appointment of officers — jurisdiction — salaries — vacancies.] That Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." The President, by and with the advice and consent of the Senate, shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed and qualified and whose salary shall be \$5,000 per annum. There shall be appointed in like manner a district attorney, whose salary shall be \$4,000 per annum, and a marshal for said district, whose salary shall be \$3,500 per annum, each for a term of four years unless sooner removed by the President. The district court for said district shall be called "the District Court of the United States for Porto Rico," and shall have power to appoint all necessary officials and assistants, including the clerk, interpreter, and such commissioners as may be necessary, who shall be entitled to the same fees and have like powers and duties as are exercised and performed by United States commissioners. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subject of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of \$3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: *Provided,* That nothing in this Act shall be deemed to impair the jurisdiction of the District Court

of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act. Upon the taking effect of this Act the salaries of the judge and officials of the District Court of the United States for Porto Rico, together with the court expenses, shall be paid from the United States revenues in the same manner as in other United States district courts. In case of vacancy or of the death, absence, or other legal disability on the part of the judge of the said District Court of the United States for Porto Rico, the President of the United States is authorized to designate one of the judges of the Supreme Court of Porto Rico to discharge the duties of judge of said court until such absence or disability shall be removed, and thereupon such judge so designated for said service shall be fully authorized and empowered to perform the duties of said office during such absence or disability of such regular judge, and to sign all necessary papers and records as the acting judge of said court, without extra compensation. [39 Stat. L. 965.]

SEC. 42. [Appeals — removal of causes — terms — pleadings.] That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said United States district court shall be held at San Juan, commencing on the first Monday in May and November of each year, and also at Ponce on the second Monday in February of each year, and special terms may be held at Mayaguez at such stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language. The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases where the same would lie from any district court to a circuit court of appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would lie from such district courts. [39 Stat. L. 966.]

SEC. 43. [Writs of error and appeals.] That writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico may be taken and prosecuted to the Circuit Court of Appeals for the First Circuit and to the Supreme Court of the United States, as now provided by law. [39 Stat. L. 966.]

SEC. 44. [Jurors — qualifications — selection, etc., of jury.] That the qualifications of jurors as fixed by the local laws of Porto Rico shall not apply to jurors selected to serve in the District Court of the United States for Porto Rico; but the qualifications required of jurors in said court shall be that each shall be of the age of not less than twenty-one years and not over sixty-five years, a resident of Porto Rico for not less than one year, and have a sufficient knowledge of the English language to enable him to serve as a juror; they shall also be citizens of the United States. Juries for the said court shall be selected, drawn and subject to exemption in accordance with the laws of Congress regulating the same in the United States courts in so far as locally applicable. [39 Stat. L. 966.]

SEC. 45. [**Fees, fines, costs and forfeitures.**] That all such fees, fines, costs, and forfeitures as would be deposited to the credit of the United States if collected and paid into a district court of the United States shall become revenues of the United States when collected and paid into the District Court of the United States for Porto Rico: *Provided*, That \$500 a year from such fees, fines, costs, and forfeitures shall be retained by the clerk and expended for law library purposes under the direction of the judge. [39 Stat. L. 966.]

SEC. 46. [**Officials and assistants — salaries.**] That the Attorney General of the United States shall from time to time determine the salaries of all officials and assistants appointed by the United States district court, including the clerk, his deputies, interpreter, stenographer, and other officials and employees, the same to be paid by the United States as other salaries and expenses of like character in United States courts. [39 Stat. L. 966.]

SEC. 47. [**Jurors and witnesses — pay.**] That jurors and witnesses in the District Court of the United States for Porto Rico shall be entitled to and receive 15 cents for each mile necessarily traveled over any stage line or by private conveyance and 10 cents for each mile over any railway in going to and returning from said courts. But no constructive or double mileage fees shall be allowed by reason of any person being summoned both as witness and juror or as witness in two or more cases pending in the same court and triable at the same term thereof. Such jurors shall be paid \$3 per day and such witnesses \$1.50 per day while in attendance upon the court. [39 Stat. L. 967.]

SEC. 48. [**Habeas Corpus — mandamus.**] That the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases. [39 Stat. L. 967.]

SEC. 49. [**Judges, marshals and secretaries — appointment.**] That hereafter all judges, marshals, and secretaries of courts now established or that may hereafter be established in Porto Rico, and whose appointment by the President is not provided for by law, shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. [39 Stat. L. 967.]

MISCELLANEOUS PROVISIONS.

SEC. 50. [**Salaries — payment — bond.**] That, except as in this Act otherwise provided, the salaries of all the officials of Porto Rico not appointed by the President, including deputies, assistants, and other help, shall be such and be so paid out of the revenues of Porto Rico as shall from time to time be determined by the Legislature of Porto Rico and approved by the governor; and if the legislature shall fail to make an appropriation for such salaries, the salaries theretofore fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of Porto

Rico appointed as herein provided by the President shall also be paid out of the revenues of Porto Rico on warrant of the auditor, counter-signed by the governor. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The governor, \$10,000; in addition thereto shall be entitled to the occupancy of the buildings heretofore used by the chief executive of Porto Rico, with the furniture and effects therein, free of rental; heads of executive departments, \$5,000; chief justice of the supreme court, \$6,500; associate justices of the supreme court, \$5,500 each.

Where any officer whose salary is fixed by this act is required to give a bond, the premium thereof shall be paid from the insular treasury. [39 Stat. L. 967.]

SEC. 51. [Salaries of municipal officials — payment.] That the provisions of the foregoing section shall not apply to municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the municipalities, shall be paid out of the municipal revenues, in such manner as the legislature shall provide. [39 Stat. L. 967.]

SEC. 52. [Continuance of certain persons in office — abolishment of certain offices.] That wherever in this Act offices of the insular government of Porto Rico are provided for under the same names as in the heretofore existing Acts of Congress affecting Porto Rico, the present incumbents of those offices shall continue in office in accordance with the terms and at the salaries prescribed by this Act, excepting the heads of those departments who are to be appointed by the governor and who shall continue in office only until their successors are appointed and have qualified. The offices of secretary of Porto Rico and director of labor, charities, and correction are hereby abolished. Authority is given to the respective appointing authorities to appoint and commission persons to fill the new offices created by this Act. [39 Stat. L. 967.]

SEC. 53. [Transfer of bureau or office.] That any bureau or office belonging to any of the regular departments of the government, or hereafter created, or not assigned, may be transferred or assigned to any department by the governor with the approval of the Senate of Porto Rico. [39 Stat. L. 968.]

SEC. 54. [Deeds, etc. — acknowledgment.] That deeds and other instruments affecting land situate in the District of Columbia, or any other territory or possession of the United States, may be acknowledged in Porto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary shall be accompanied by the certificate of the executive secretary of Porto Rico to the effect that the notary taking such acknowledgment is in fact such notarial officer. [39 Stat. L. 968.]

SEC. 55. [Jurisdiction of existing courts over pending matters.] That nothing in this Act shall be deemed to impair or interrupt the jurisdiction

of existing courts over matters pending therein upon the approval of this Act, which jurisdiction is in all respects hereby continued, the purpose of this Act being to preserve the integrity of all of said courts and their jurisdiction until otherwise provided by law, except as in this Act otherwise specifically provided. [39 Stat. L. 968.]

SEC. 56. [When Act becomes effective.] That this Act shall take effect upon approval, but until its provisions shall severally become operative, as hereinbefore provided, the corresponding legislative and executive functions of the government in Porto Rico shall continue to be exercised and in full force and operation as now provided by law; and the executive council shall, until the assembly and organization of the Legislature of Porto Rico as herein provided, consist of the attorney general, the treasurer, the commissioner of the interior, the commissioner of education, the commissioner of health, and the commissioner of agriculture and labor, and the five additional members as now provided by law. And any functions assigned to the Senate of Porto Rico by the provisions of this Act shall, until this said senate has assembled and organized as herein provided, be exercised by the Executive Council as thus constituted: *Provided, however,* That all appointments made by the governor, by and with the advice and consent of the Executive Council as thus constituted, in the Executive Council as authorized by section thirteen of this Act or in the office of Executive Secretary of Porto Rico, shall be regarded as temporary and shall expire not later than twenty days from and after the assembly and organization of the Legislature hereinbefore provided, unless said appointments shall be ratified and made permanent by the said Senate of Porto Rico. [39 Stat. L. 968.]

SEC. 57. [Existing laws and ordinances — continuance in force.] That the laws and ordinances of Porto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Porto Rico or by Act of Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal continued in force by this Act as it may from time to time see fit. [39 Stat. L. 968.]

SEC. 58. [Laws continued in force — repeal of conflicting laws.] That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled "An Act temporarily to provide revenues and a civil government for Porto Rico and for other purposes," approved April twelfth, nineteen hundred, are hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed. [39 Stat. L. 968.]

For the Act of April 12, 1900, ch. 191, mentioned in this section, see 5 Fed. Stat. Ann. 762; 7 Fed. Stat. Ann. (2d ed.) 1259.

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[SEC. 1.][Official Postal Guide — contracts for publication.] * * *

Hereafter contracts let for the publication of the Official Postal Guide shall provide for the supply of such copies as may be required for public use by the several executive departments and other Government establishments at a price not exceeding the cost of such guides to the Post Office Department. [39 Stat. L. 108.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 117.

An Act To amend the Act approved June twenty-fifth, nineteen hundred and ten, authorizing the postal savings system, and for other purposes.

[*Act of May 18, 1916, ch. 126, 39 Stat. L. 159.*]

[SEC. 1.] [Postal savings depositories — restriction of deposits — former Act amended.] That such part of section six of the Act approved June twenty-fifth, nineteen hundred and ten, authorizing a system of postal savings depositories, as reads “but no one shall be permitted to deposit more than \$100 in any one calendar month” is hereby amended to read as follows: “but the balance to the credit of any person, upon which interest is payable, shall not exceed \$1,000, exclusive of accumulated interest”; and said Act is further amended so that the proviso in section seven thereof shall read as follows: “*Provided*, That the board of trustees may, in their discretion, and under such regulations as such board may promulgate, accept additional deposits not to exceed in the aggregate \$1,000 for each depositor, but upon which no interest shall be paid.” [39 Stat. L. 159.]

For the Act of June 25, 1910, ch. 386, §§ 6 and 7, amended by this section, see 1912 Supp. Fed. Stat. Ann. 295, 296; 8 Fed. Stat. Ann. (2d ed.) 243.

SEC. 2. [Postal savings funds — disposition — investment — “territory” — “bank.”] That postal savings funds received under the provisions of this Act shall be deposited in solvent banks, whether organized under National or State laws, and whether member banks or not of the Federal reserve system established by the Act approved December twenty-third, nineteen hundred and thirteen, being subject to National or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than two and one-fourth per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but five per centum of such fund shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein (substantially in proportion to the capital and surplus of each such bank) willing to receive such deposits under the terms of this Act and the regulations made by authority thereof: *Provided, however*, If one or more member banks of the Federal reserve system established by the Act approved December twenty-third, nineteen hundred and thirteen, exists in the city, town, village, or locality where the postal savings deposits are made, such deposits shall be placed in such qualified member banks substantially in proportion to the capital and surplus of each such bank, but if such member banks fail to qualify to receive such deposits, then any other bank located therein may, as hereinbefore provided, qualify and receive the same. If no such member bank and no other qualified bank

exists in any city, town, village, or locality, or if none where such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of this Act in the bank most convenient to such locality. If no such bank in any State or Territory is willing to receive such deposits on the terms prescribed, then such funds shall be deposited with the treasurer of the board of trustees and shall be counted in making up the reserve of five per centum. Such funds may be withdrawn from the treasurer of said board of trustees, and all other postal savings funds, or any part of such funds, may be at any time withdrawn from the banks and savings depository offices for the repayment of postal savings depositors when required for that purpose. If at any time the postal savings deposits in any State or Territory shall exceed the amount which the qualified banks therein are willing to receive under the terms of this Act, and such excess amount is not required to make up the reserve fund of five per centum hereinbefore provided for, the board of trustees may invest all or any part of such excess amount in bonds or other securities of the United States. When, in the judgment of the President, the general welfare and interests of the United States so require, the board of trustees may invest all or any part of the postal savings funds, except the reserve fund of five per centum herein provided for, in bonds or other securities of the United States. The board of trustees may in its discretion purchase from the holders thereof bonds which have been or may be issued under the provisions of section ten of the Act of June twenty-fifth, nineteen hundred and ten. Interest and profit accruing from the deposits or investment of postal savings funds shall be applied to the payment of interest due to postal savings depositors, as hereinbefore provided, and the excess thereof, if any, shall be covered into the Treasury of the United States as a part of the postal revenue: *Provided further*, That postal savings funds in the treasury of said board shall be subject to disposition as provided in this Act, and not otherwise: *And provided further*, That the board of trustees may at any time dispose of bonds held as postal savings investments and use the proceeds to meet withdrawals of deposits by depositors. For the purposes of this Act the word "Territory" as used herein shall be held to include the District of Columbia, the District of Alaska, and Porto Rico, and the word "bank" shall be held to include savings banks and trust companies doing a banking business. [39 Stat. L. 159.]

For the Act of Dec. 23, 1913, ch. 6, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 260; 6 Fed. Stat. Ann. (2d ed.) 817.

For the Act of June 25, 1910, ch. 386, § 10, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 297; 8 Fed. Stat. Ann. (2d ed.) 246.

SEC. 3. [Empty mail bags — return to mails — pay for railroad transportation.] That the Postmaster General, in cases of emergency, between October first and April first of any year, may hereafter return to the mails empty mail bags, theretofore withdrawn therefrom as required by law, and for such times may pay for their railroad transportation out of the appropriation for inland transportation by railroad routes at not exceeding the rate per pound per mile as shown by the last adjustment for mail service on the route over which they may be carried, and pay for necessary cartage out of the appropriation for freight or expressage. [39 Stat. L. 160.]

SEC. 4. [Weights of mails — ascertainment — weighing period.] That when, during a weighing period, on account of floods or other causes, interruptions in service occur on railroad routes and the weights of mail are decreased below the normal, or where there is an omission to take weights, the Postmaster General, for the purpose of readjusting compensation on such railroad routes as are affected thereby, is hereafter authorized, in his discretion, to add to the weights of mails ascertained on such routes during that part of the weighing period when conditions are shown to have been normal the estimated weights for that part of the weighing period when conditions are shown to have been not normal, or where there has been an omission to take weights, based upon the average of weights taken during that part of the weighing period during which conditions are shown to have been normal, the actual weights and the estimated weights to form the basis for the average weight per day upon which to readjust the compensation according to law on such railroad routes for the transportation of the mails, notwithstanding the provision of the Act of Congress approved March third, nineteen hundred and five, requiring that the average weight shall be ascertained by the actual weighing of the mails for such a number of successive working days, not less than ninety, as the Postmaster General may direct: *Provided further*, That readjustments from July first, nineteen hundred and thirteen, may be made under this provision on routes in the first section affected by the floods in the Ohio Valley and tributary territories, commencing about March twenty-fifth, nineteen hundred and thirteen. [39 Stat. L. 161.]

For the Act of March 3, 1905, ch. 1480, § 1, mentioned in this section, see 10 Fed. Stat. Ann. 336; 8 Fed. Stat. Ann. (2d ed.) 204.

SEC. 5. [Mail transportation — compensation — adjustment — former Act repealed.] That so much of section four of "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved August twenty-fourth, nineteen hundred and twelve, as provides that no adjustment shall be made unless the diverted mails equal at least ten per centum of the average daily weight on any of the routes affected is hereby repealed. [39 Stat. L. 161.]

For the Act of Aug. 24, 1912, ch. 389, § 4, in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 209.

SEC. 6. [Mail contracts — award — lowest bidder — R. S. sec. 3949 amended.] That section thirty-nine hundred and forty-nine of the Revised Statutes be amended to read as follows:

"All contracts for carrying the mail shall be in the name of the United States and shall be awarded to the lowest bidder tendering sufficient guaranties for faithful performance in accordance with the terms of the advertisement: *Provided, however*, That such contracts require due celerity, certainty, and security in the performance of the service; but the Postmaster General shall not be bound to consider the bid of any person who has willfully or negligently failed to perform a former contract." [39 Stat. L. 161.]

For R. S. sec. 3949, amended by this section, see 5 Fed. Stat. Ann. 883; 8 Fed. Stat. Ann. (2d ed.) 154.

SEC. 7. [Unreasonable or fraudulent bids.] That whenever in the judgment of the Postmaster General the bids received for any star route are exorbitant or unreasonable, or whenever he has reason to believe that a combination of bidders has been entered into to fix the rate for star-route service, the Postmaster General be, and he is hereby, authorized, out of the appropriation for inland transportation by star routes, to employ and use such means or methods to provide the desired service as he may deem expedient, without reference to existing law or laws respecting the employment of personal service or the procurement of conveyances, materials, or supplies. [39 Stat. L. 161.]

SEC. 8. [Temporary mail contracts.] That whenever an accepted bidder shall fail to enter into contract, or a contractor on any mail route shall fail or refuse to perform the service on said route according to his contract, or when a new route shall be established or new service required, or when, from any other cause, there shall not be a contractor legally bound or required to perform such service, the Postmaster General may make a temporary contract for carrying the mail on such route, without advertisement, for such period as may be necessary, not in any case exceeding one year, until the service shall have commenced under a contract made according to law: *Provided*, That the cost of temporary service rendered necessary by reason of the failure of any accepted bidder to enter into contract or a contractor to perform service shall be charged to such bidder or contractor. [39 Stat. L. 161.]

SEC. 9. [Mail contracts — money due contractor — lien.] That if any person shall hereafter perform any service for any contractor or subcontractor in carrying the mail, he shall, upon filing in the department his contract for such service and satisfactory evidence of its performance, thereafter have a lien on any money due such contractor or subcontractor for such service to the amount of same; and if such contractor or subcontractor shall fail to pay the party or parties who have performed service as aforesaid the amount due for such service within two months after the expiration of the month in which such service shall have been performed the Postmaster General may cause the amount due to be paid said party or parties and charged to the contractor: *Provided*, That such payment shall not in any case exceed the rate of pay per annum of the contractor or subcontractor. [39 Stat. L. 162.]

Section 10 of this Act amends Penal Laws, § 198, and is given in PENAL LAWS, *ante*, p. 581.

SEC. 11. [First-class mail matter — limit of weight.] That the limit of weight of mail matter of the first class shall be the same as is applicable to mail of the fourth class: *Provided*, That no article or package exceeding four pounds in weight shall be admitted to the mails under the penalty privilege unless it comes within the exceptions named in the Acts of June eighth, eighteen hundred and ninety-six (chapter three hundred and seventy, Twenty-ninth Statutes, page two hundred and sixty-two), and June twenty-sixth, nineteen hundred and six (chapter thirty-five hundred

and forty-six, Thirty-fourth Statutes, page four hundred and seventy-seven). [39 Stat. L. 162.]

For the Act of June 8, 1896, ch. 370, mentioned in the text, see 5 Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 105.

For the provisions of the Act of June 26, 1906, ch. 3546, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 521; 8 Fed. Stat. Ann. (2d ed.) 129.

SEC. 12. [Postage stamps — cancelling.] That postage stamps affixed to all mail matter or to stamped envelopes in which the same is enclosed shall, when deposited for mailing or delivery, be defaced by the postmaster at the mailing office: *Provided*, That when practicable postage stamps may be furnished to postmasters precanceled by printing on them the name of the post office at which they are to be used, under such regulations as the Postmaster General may prescribe. [39 Stat. L. 162.]

SEC. 13. [Postage stamps — affixing — mail matter in bulk — former act amended.] That section two of the Act of April twenty-eighth, nineteen hundred and four (chapter seventeen hundred and fifty-nine, Thirty-third Statutes, page four hundred and forty), be amended to read as follows:

“ That under such regulations as the Postmaster General may establish for the collection of the lawful revenue and for facilitating the handling of such matter in the mails it shall be lawful to accept for transmission in the mails, without postage stamps affixed, quantities of not less than three hundred identical pieces of third-class matter and of second-class matter, and two hundred and fifty identical pieces of fourth-class matter, and packages of money and securities mailed under postage at the first or fourth-class rate by the Treasury Department: *Provided*, That postage shall be fully prepaid thereon at the rate required by law for a single piece of such matter.” [39 Stat. L. 162.]

For the Act of April 28, 1904, ch. 1759, § 2, amended by this section, see 10 Fed. Stat. Ann. 335; 8 Fed. Stat. Ann. (2d ed.) 128.

SEC. 14. [Postmasters' claim for losses — navy mail clerks — adjustment — former Act amended.] That the Act approved January twenty-first, nineteen hundred and fourteen (Thirty-eighth Statutes, page two hundred and seventy-eight), authorizing the Postmaster General to adjust certain claims of postmasters for loss by burglary, fire, or other unavoidable casualty, be so amended as to include Navy mail clerks and assistant Navy mail clerks. [39 Stat. L. 163.]

For the Act of Jan. 21, 1914, ch. 12, amended by this section, see 1916 Supp. Fed. Stat. Ann. 189; 8 Fed. Stat. Ann. (2d ed.) 57.

SEC. 15. [Contract stations — contracts for conduct of.] That hereafter the Postmaster General may enter into contracts for the conduct of contract stations for a term not exceeding two years. [39 Stat. L. 163.]

SEC. 16. [Fourth-class post offices — reclassification — salary of postmasters.] That, when the total compensation of any postmaster at a post

office of the fourth class for four consecutive quarters, shall amount to \$1,000, exclusive of commissions on money orders issued, and the receipts of such post office for the same period shall aggregate as much as \$1,900, the Auditor for the Post Office Department shall so report to the Postmaster General, who shall, in pursuance of such report, assign such post office to its proper class, to become effective at the beginning of the next succeeding quarterly period, and fix the salary of the postmaster accordingly. [39 Stat. L. 168.]

As originally enacted, this section contained, after the initial word "That," a clause as follows: "on and after July first, nineteen hundred and sixteen." This was struck out by the Postal Service Appropriation Act of July 28, 1916, ch. 261, § 1, 39 Stat. L. 418.

SEC. 17. [Repeal of conflicting provisions.] That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed. [39 Stat. L. 163.]

An Act To provide that the United States shall aid the States in the construction of rural post roads, and for other purposes.

[Act of July 11, 1916, ch. 241, 39 Stat. L. 355.]

[SEC. 1.] [Rural post roads — federal aid — freedom from tolls.] That the Secretary of Agriculture is authorized to cooperate with the States, through their respective State highway departments, in the construction of rural post roads; but no money apportioned under this Act to any State shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction: *Provided*, That all roads constructed under the provisions of this Act shall be free from tolls of all kinds. [39 Stat. L. 355.]

SEC. 2. [Definitions — "rural post roads" — "State highway department" — "construction" — "properly maintained."] That for the purpose of this Act the term "rural post road" shall be construed to mean any public road over which the United States mails are now or may hereafter be transported, excluding every street and road in a place having a population, as shown by the latest available Federal census, of two thousand five hundred or more, except that portion of any such street or road along which the houses average more than two hundred feet apart; the term "State highway department" shall be construed to include any department of another name, or commission, or official or officials, of a State empowered, under its laws, to exercise the functions ordinarily exercised by a State highway department; the term "construction" shall be construed to include reconstruction and improvement of roads; "properly

maintained " as used herein shall be construed to mean the making of needed repairs and the preservation of a reasonably smooth surface considering the type of the road; but shall not be held to include extraordinary repairs, nor reconstruction; necessary bridges and culverts shall be deemed parts of the respective roads covered by the provisions of this Act. [39 Stat. L. 356.]

SEC. 3. [Appropriation — apportionment.] That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of \$5,000,000; for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$10,000,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$15,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$20,000,000; and for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$25,000,000. So much of the appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof shall be available for expenditure in that State until the close of the succeeding fiscal year, except that amounts apportioned for any fiscal year to any State which has not a State highway department shall be available for expenditure in that State until the close of the third fiscal year succeeding the close of the fiscal year for which such apportionment was made. Any amount apportioned under the provisions of this Act unexpended at the end of the period during which it is available for expenditure under the terms of this section shall be reapportioned, within sixty days thereafter, to all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and to the State highway departments and to the governors of States having no State highway departments in the same way as if it were being apportioned under this Act for the first time: *Provided*, That in States where the constitution prohibits the State from engaging in any work of internal improvements, then the amount of the appropriation under this Act apportioned to any such State shall be turned over to the highway department of the State or to the governor of said State to be expended under the provisions of this Act and under the rules and regulations of the Department of Agriculture, when any number of counties in any such State shall appropriate or provide the proportion or share needed to be raised in order to entitle such State to its part of the appropriation apportioned under this Act. [39 Stat. L. 356.]

SEC. 4. [Deductions from appropriations.] That so much, not to exceed three per centum, of the appropriation for any fiscal year made by or under this Act as the Secretary of Agriculture may estimate to be necessary for administering the provisions of this Act shall be deducted for that purpose, available until expended. Within sixty days after the close of each fiscal year the Secretary of Agriculture shall determine what part, if any, of the sums theretofore deducted for administering the provisions of this Act will not be needed for that purpose and apportion such part,

if any, for the fiscal year then current in the same manner and on the same basis, and certify it to the Secretary of the Treasury and to the State highway departments, and to the governors of States having no State highway departments, in the same way as other amounts authorized by this Act to be apportioned among all the States for such current fiscal year. The Secretary of Agriculture, after making the deduction authorized by this section, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery routes and star routes in all the States, at the close of the next preceding fiscal year, as shown by the certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary of Agriculture. [39 Stat. L. 356.]

SEC. 5. [Certificates by Secretary of Agriculture.] That within sixty days after the approval of this Act the Secretary of Agriculture shall certify to the Secretary of the Treasury and to each State highway department and to the governor of each State having no State highway department the sum which he has estimated to be deducted for administering the provisions of this Act and the sum which he had apportioned to each State for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and on or before January twentieth next preceding the commencement of each succeeding fiscal year shall make like certificates for such fiscal year. [39 Stat. L. 357.]

SEC. 6. [Project statements, etc.—submission by States — approval — payment of money apportioned.] That any State desiring to avail itself of the benefits of this Act shall, by its State highway department, submit to the Secretary of Agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the Secretary of Agriculture approve a project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: *Provided, however,* That the Secretary of Agriculture shall approve only such projects as may be substantial in character and the expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the Secretary of Agriculture approve the plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this Act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this Act shall be made on any project until such statement of the project, and the plans, specifications, and esti-

mates therefor, shall have been submitted to and approved by the Secretary of Agriculture.

When the Secretary of Agriculture shall find that any project so approved by him has been constructed in compliance with said plans and specifications he shall cause to be paid to the proper authority of said State the amount set aside for said project: *Provided*, That the Secretary of Agriculture may, in his discretion, from time to time make payments on said construction as the same progresses, but these payments including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into said construction in conformity to said plans and specifications; nor shall any such payment be in excess of \$10,000 per mile, exclusive of the cost of bridges of more than twenty feet clear span. The construction work and labor in each State shall be done in accordance with its laws, and under the direct supervision of the State highway department subject to the inspection and approval of the Secretary of Agriculture and in accordance with the rules and regulations made pursuant to this Act.

The Secretary of Agriculture and the State highway department of each State may jointly determine at what times, and in what amounts, payments, as work progresses, shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of Agriculture, to such official, or officials, or depository, as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State or county. [39 Stat. L. 357.]

SEC. 7. [Maintenance of roads.] To maintain the roads constructed under the provisions of this Act shall be the duty of the States, or their civil subdivisions, according to the laws of the several States. If at any time the Secretary of Agriculture shall find that any road in any State constructed under the provisions of this Act is not being properly maintained he shall give notice of such fact to the highway department of such State and if within four months from the receipt of said notice said road has not been put in a proper condition of maintenance then the Secretary of Agriculture shall thereafter refuse to approve any project for road construction in said State, or the civil subdivision thereof, as the fact may be, whose duty it is to maintain said road, until it has been put in a condition of proper maintenance. [39 Stat. L. 358.]

Section 8 of this Act, relating to roads in and adjacent to national forests, is given in *TIMBER LANDS AND FOREST RESERVES*, *post*, p. 836.

SEC. 9. [Clerks — offices — supplies.] That out of the appropriations made by or under this Act, the Secretary of Agriculture is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures, and apparatus, and to incur such travel and other expense as he may deem necessary for carrying out the purposes of this Act. [39 Stat. L. 359.]

SEC. 10. [Rules and regulations.] That the Secretary of Agriculture is authorized to make rules and regulations for carrying out the provisions of this Act. [39 Stat. L. 359.]

SEC. 11. [Time of taking effect of Act.] That this Act shall be in force from the date of its passage. [39 Stat. L. 359.]

An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and seventeen; and for other purposes.

[Act of July 28, 1916, ch. 261, 39 Stat. L. 412.]

[SEC. 1.] [Injured postal employees — substitutes — leave of absence — sick and death benefits — military service of postal employees.] * * * That hereafter the Postmaster General shall have authority to employ acting employees in place of all employees or substitutes hereinafter mentioned who are injured while on duty, who shall be granted leave of absence with full pay during the period of disability, but not exceeding one year, then at the rate of fifty per centum of the employee's salary for the period of disability exceeding one year, but not exceeding twelve months additional, and the Postmaster General is authorized to pay the sum of \$2,000, which shall be exempt from payment of debts of the deceased, to the legal representatives, for the benefit of wife, children, or dependent relatives, of any railway postal clerk, substitute railway postal clerk, supervisory official of the Railway Mail Service, post-office inspector, letter carrier in the City Delivery Service, rural letter carrier, post-office clerk, special-delivery messenger, post-office laborer or any classified civil-service employee in post offices of the first and second classes who shall be killed while on duty, or who, being injured while on duty, shall die within one year thereafter as the result of such injury: *Provided*, That no compensation shall be paid any such employee for any injury occasioned by his own negligence. * * *

That the Postmaster General shall not approve or continue any rule or regulation which terminates the employment of any employee by reason of absence on account of illness for a period of less than one year, and that any postal employee who has entered the military service of the United States or who shall hereafter enter it shall, upon being honorably discharged therefrom, be permitted to resume the position in the postal department which he left to enter such military service. [39 Stat. L. 413.]

[Clerks — appointment — assignment — former Act amended.] That section five of the Act approved August twenty-fourth, nineteen hundred and twelve, entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," be, and the same is hereby, amended to include employees of first and second class post offices designated as "Special clerks." * * * and hereafter the appointment and assignment of clerks hereunder shall be so made during each fiscal year as not to

involve a greater aggregate expenditure than the sum appropriated; and to enable the Postmaster General to carry out the provisions of the Act of March second, nineteen hundred and seven, classifying clerks and city letter carriers in first and second class post offices, he may hereafter exceed the number of clerks appropriated for particular grades: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 416.]

For the Act of Aug. 24, 1912, ch. 389, § 5, amended by the text, see 1914 Supp. Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 76.

For the Act of March 2, 1907, ch. 2513, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 522; 8 Fed. Stat. Ann. (2d ed.) 71.

[Employment of clerks, etc., on holidays — pay.] * * * That hereafter when the needs of the Postal Service require the employment on holidays of clerks in first and second class post offices and letter carriers in the City Delivery Service, the employees who are required and ordered to perform holiday work shall be allowed compensatory time on one of the thirty days following the holiday on which they perform such service: *Provided*, That for the purpose of this Act holidays shall be New Year's Day (January first); Washington's Birthday (February twenty-second); Memorial Day (May thirtieth); Independence Day (July fourth); the first Monday in September, known as Labor Day; Christmas (December twenty-fifth); and such other days as the President of the United States may set apart as fast or thanksgiving days. [39 Stat. L. 416.]

[Letter carriers — collection duty and delivery duty — salary.] * * * That hereafter there shall be no distinction in salary made between letter carriers assigned to collection duty and letter carriers assigned to delivery duty: *And provided further*, That letter carriers whose salaries have been reduced as the result of any order of the Post Office Department, making the maximum salary \$1,000 to be paid letter carriers assigned to collection duty, shall be restored to their former grades. [39 Stat. L. 417.]

[Proposals for carrying mail — R. S. sec. 3944 amended.] * * * That section thirty-nine hundred and forty-four, Revised Statutes, is hereby amended by the elimination of the words "or the Second Assistant Postmaster General," and the Act of May seventeenth, eighteen hundred and seventy-eight, is hereby amended by the substitution of the words "Postmaster General" for the words "Second Assistant Postmaster General" wherever they occur. [39 Stat. L. 418.]

For R. S. sec. 3944, amended by the text, see 5 Fed. Stat. Ann. 880; 8 Fed. Stat. Ann. (2d ed.) 152.

[Mail messenger service.] * * * That postmasters may be designated by the Postmaster General as disbursing officers for the payment of mail messengers and others engaged under their supervision in transporting the mails: *Provided further*, That, in the discretion of the Postmaster General, postmasters, assistant postmasters, and clerks at post offices of the third and fourth classes may enter into contracts for the performance of mail

messenger services, and allowances may be made therefor from this appropriation: *Provided further*, That the total amount payable under such contract to any postmaster, assistant postmaster, or clerk shall not exceed \$300 in any one year. [39 Stat. L. 418.]

[Undelivered letters — R. S. sec. 3938 amended.] * * * That section thirty-nine hundred and thirty-eight of the Revised Statutes is hereby amended to read as follows:

“All letters of domestic origin which can not be delivered by postmasters shall be sent to the Post Office Department or to a post office designated by the Postmaster General and such as contain inclosures of value, other than correspondence, shall be recorded. If the sender or addressee can not be identified, such letters shall be held for a period of one year awaiting reclamation. If within one year they have not been claimed, they shall be disposed of as the Postmaster General may direct. All other undeliverable letters shall be disposed of without record and not held for reclamation.” [39 Stat. L. 418.]

For R. S. sec. 3938, amended by the text, see 5 Fed. Stat. Ann. 877; 8 Fed. Stat. Ann. (2d ed.) 150.

[Railway mail clerks — assignments — promotions — deadheading.]

* * * That clerks assigned as clerks in charge of crews consisting of more than one clerk shall be clerks of grades five to ten, inclusive, and may be promoted one grade only after three years' satisfactory and faithful service in such capacity: *Provided further*, That railway postal clerks shall be credited with full time when deadheading under orders of the department. [39 Stat. L. 419.]

[Railway postal clerks — vacations — pay — substitutes — former Acts repealed.] * * *

That the Act of March third, nineteen hundred and one (Thirty-first Statutes, page eleven hundred and five), be amended to read as follows: “The Postmaster General may allow railway postal clerks an annual vacation of fifteen days, with pay”: *And provided further*, That the Act of March fourth, nineteen hundred and thirteen (Thirty-seventh Statutes, page seven hundred and ninety-eight), be amended to read as follows: “That hereafter the Postmaster General may, in his discretion, under such regulations as he may provide, allow any railway postal clerk leave of absence with pay for a period not exceeding thirty days, with the understanding that his duties will be performed without expense to the Government during the period for which leave is granted, he to provide a substitute at his own expense.” [39 Stat. L. 420.]

The proviso of the Act of March 3, 1901, ch. 851, § 1, 31 Stat. L. 1105, amended by the text, was as follows:

“The Postmaster-General may allow railway postal clerks whose duties require them to work six days or more per week, fifty-two weeks per year, an annual vacation of fifteen days, with pay.”

This had been superseded, prior to its amendment by the text, by the Act of March 1, 1909, ch. 232, § 1, which was in the same words but with the addition of the word “hereafter,” which rendered it permanent. See 1909 Supp. Fed. Stat. Ann. 526; 8 Fed. Stat. Ann. (2d ed.) 206.

For the provisions of the Act of March 4, 1913, ch. 143, amended by the text, see 1914 Supp. Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 212.

[Maps — post-route — rural delivery.] * * * and the Postmaster General may authorize the sale to the public of post-route maps and rural-delivery maps or blue prints at the cost of printing and ten per centum thereof added, the proceeds of such sale to be used as a further appropriation for the preparation and publication of post-route maps and rural-delivery maps or blue prints. [39 Stat. L. 422.]

[Rural mail delivery — extension of service.] * * * That rural mail delivery shall be extended so as to serve, as nearly as practicable, the entire rural population of the United States. [39 Stat. L. 423.]

[Rural mail delivery — routes — classes — letter carriers — appointment — pay — parcel post.] * * * Hereafter all rural mail delivery routes shall be divided into two classes to be known as—

Standard horse-drawn vehicle routes, which shall be twenty-four miles in length, and

Standard motor-vehicle routes, which shall be fifty miles in length, and shall only be established hereafter when a majority of the proposed patrons who are heads of families residing upon such proposed routes shall by written petition ask the Post Office Department to establish the same.

Nothing herein contained shall be construed to prohibit the establishment of horse-drawn vehicle routes of less length than the standard of twenty-four miles: *Provided*, That if, in the discretion of the Postmaster General, in order to render more complete service, it should be necessary to do so the Postmaster General is hereby authorized to increase the length of routes not to exceed fifty per centum above the standards herein prescribed, and in such cases the compensation of the carrier on such horse-drawn vehicle routes shall be increased above the maximum pay heretofore fixed by law for rural carriers at the rate of \$24 per annum for each mile of said routes in excess of thirty miles, and any major fraction of a mile shall be counted as a mile: *Provided further*, That carriers in rural mail-delivery service shall furnish and maintain at their own expense all necessary vehicle equipment for prompt handling of the mail: *And provided further*, That nothing herein shall be construed, and no order shall be issued, to prevent the use of motor vehicles on horse-drawn vehicle routes: *Provided further*, The Postmaster General in his discretion may require all carriers to furnish sufficient equipment to properly handle postal business on their routes: *And provided further*, That the Postmaster General may, in his discretion, allow and pay additional compensation to rural letter carriers who are required to carry pouch mail to intermediate post offices, or for intersecting loop routes, in all cases where it appears that the carriage of such pouches increases the expense of the equipment required by the carrier or materially increases the amount of labor performed by him, such compensation not to exceed the sum of \$12 per annum for each mile such carrier is required to carry such pouch or pouches.

The Postmaster General is hereby authorized and directed to reorganize and readjust existing rural mail delivery service where necessary to conform to the standards herein prescribed: *Provided further*, That in making appointments of rural carriers for service on new routes, which may be created by the reorganization herein ordered, preference shall be given to

carriers who were formerly employed in rural-delivery service and who were separated therefrom on or after June thirtieth, nineteen hundred and fifteen, by reason of any previous reorganization of the service and without charges against them: *And provided further*, That the Postmaster General is authorized and directed to pay, out of the appropriations already made and still available and unexpended for rural free-delivery service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, to all letter carriers in the Rural Free Delivery Service during the fiscal year ending June thirtieth, nineteen hundred and fifteen, their executors or administrators, the difference between what they received for their said services and the amount that would have been paid to them in accordance with the proviso contained in joint resolution making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and sixteen, approved March fourth, nineteen hundred and fifteen: *Provided*, That no part of the money paid under this provision shall be paid to any agent or attorney, directly or indirectly, for any alleged services in connection with this appropriation.

The Postmaster General is hereby authorized to conduct experiments in three or more communities for the purpose of determining the most practical means of extending the operations of the parcel post in the direction of promoting the marketing of farm products and furthering direct transactions between producers and consumers. Such investigation will further include the consideration of the effects on the Rural Free Delivery Service such extension of the Parcel Post System will have, and report of conclusions reached shall be made to Congress. [39 Stat. L. 423.]

SEC. 2. [Second-class mail matter — sending by freight — former Act repealed.] That so much of section one of the “ Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes,” approved August twenty-fourth, nineteen hundred and twelve, which provides that the Post Office Department shall not extend or enlarge its present policy of sending second-class matter by freight trains, is hereby repealed, but no publication shall be sent by freight if such method of transportation results in unfair discrimination: *Provided*, That whenever the owner of any publication required by an order of the Post Office Department to be transmitted by freight believes that he is unfairly discriminated against, he may apply to the Post Office Department for an opportunity to be heard; that upon such application being duly filed in writing the owner of such publication shall have opportunity for a full and fair hearing before said department, and pending final determination no change shall be made in the method of transportation of such publication as ordered by the department. The testimony in any such hearing or proceedings shall be reduced to writing and filed in the Post Office Department prior to entering an order upon such hearing. That upon such hearing if the Post Office Department decides adversely to the contention of the publisher, such publisher shall have the right, within the period of twenty days after the date of the order of the Post Office Department made upon such hearing, to appeal to the United States court of appeals of the District of Columbia, for a review of such order by said court of appeals, by filing in the court a written peti-

tion praying that the order of the Post Office Department be set aside. A copy of such petition shall be forthwith served upon the Post Office Department and thereupon the said department forthwith shall certify and file in the court a transcript of the record and testimony. Upon the filing of such transcript the court shall have jurisdiction to affirm, set aside or modify the order of the department.

The jurisdiction of the court of appeals of the District of Columbia to affirm, set aside or modify such orders of the Post Office Department shall be exclusive.

Such proceedings in the court of appeals of the District of Columbia shall be given precedence over other cases pending therein and shall be in every way expedited. [39 Stat. L. 424.]

For the provisions of the Act of Aug. 24, 1912, ch. 389, repealed by the text, see 1914 Supp. Fed. Stat. Ann. 313; 8 Fed. Stat. Ann. (2d ed.) 208.

SEC. 3. [Increased weight of mails — additional compensation.] That on account of the increased weight of mails resulting from Postmaster General's order numbered seventy-seven hundred and twenty, of December eighteenth, nineteen hundred and thirteen, respecting rates upon and limit of weight of parcel-post packages, effective from January first, nineteen hundred and fourteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after January first, nineteen hundred and fourteen, for the remainder of the contract terms, not exceeding one per centum thereof per annum. [39 Stat. L. 425.]

SEC. 4. [Transportation of mails — additional compensation.] That on account of the increased weight of mails resulting from Postmaster General's order numbered seventy-three hundred and forty-nine, of July twenty-fifth, nineteen hundred and thirteen, respecting rates upon the limit of weight of parcel-post packages in the local, first, and second zones, and effective from August fifteenth, nineteen hundred and thirteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after August fifteenth, nineteen hundred and thirteen, for the remainder of the contract terms, not exceeding one-half of one per centum thereof per annum. [39 Stat. L. 425.]

SEC. 5. [Transportation of mails — readjustment of compensation — equipment of railroad companies.] That the Postmaster General is authorized and directed to readjust the compensation to be paid to railroad companies from and after the thirtieth day of June, nineteen hundred and sixteen, or as soon thereafter as may be practicable, for the transportation and handling of the mails and furnishing facilities and services in connection therewith upon the conditions and at the rates hereinafter provided.

The Postmaster General may state railroad mail routes and authorize mail service thereon of the following four classes, namely: Full railway post-office car service, apartment railway post-office car service, storage-car service, and closed-pouch service.

Full railway post-office car mail service shall be service by cars forty feet or more in length, constructed, fitted up, and maintained for the distribution of mails on trains. The authorizations of full railway post-office

cars shall be for standard-sized cars sixty feet in length, inside measurement, except as hereinafter provided.

Apartment railway post-office car mail service shall be service by apartments less than forty feet in length in cars constructed, fitted up, and maintained for the distribution of mails on trains. Two standard sizes of apartment railway post-office cars may be authorized and paid for, namely, apartments fifteen feet and thirty feet in length, inside measurement, except as hereinafter provided.

Storage-car mail service shall be service by cars used for the storage and carriage of mails in transit other than by full and apartment railway post-office cars. The authorizations for storage cars shall be for cars sixty feet in length, inside measurement, except as hereinafter provided: *Provided*, That storage space in units of three feet, seven feet, fifteen feet, and thirty feet, both sides of car, may be authorized in baggage cars at not exceeding pro rata of the rates hereinafter named for sixty-foot storage cars.

Service by full and apartment railway post-office cars and storage cars shall include the carriage therein of all mail matter, equipment, and supplies for the mail service and the employees of the Postal Service or Post Office Department, as shall be directed by the Postmaster General to be so carried.

Closed-pouch mail service shall be the transportation and handling by railroad employees of mails on trains on which full or apartment railway post-office cars are not authorized, except as hereinbefore provided. The authorizations for closed-pouch service shall be for units of seven feet and three feet in length, both sides of car.

The rates of payment for the services authorized in accordance with this section shall be as follows, namely:

For full railway post-office car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding \$4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

For apartment railway post-office car mail service at not exceeding 11 cents for each mile of service by a thirty-foot apartment car and 6 cents for each mile of service by a fifteen-foot apartment car.

In addition thereto he may allow not exceeding \$2.75 as a combined initial and terminal rate for each one-way trip of a thirty-foot apartment car and \$2 as a combined initial and terminal rate for each one-way trip of a fifteen-foot apartment car.

For storage-car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding \$4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

Where authorizations are made for cars of the standard lengths of sixty, thirty, and fifteen feet, as provided by this section, and the railroad company is unable to furnish such cars of the length authorized, but furnishes cars of lesser length than those authorized, but which are determined by the department to be sufficient for the service, the Postmaster General may accept the same and pay only for the actual space furnished and used, the compensation to be not exceeding pro rata of that provided by this section for the standard length so authorized: *Provided*, That the Postmaster

General may accept cars and apartments of greater length than those of the standard requested, but no compensation shall be allowed for such excess lengths.

For closed-pouch service, at not exceeding 11½ cents for each mile of service when a three-foot unit is authorized, and 3 cents for each mile of service when a seven-foot unit is authorized.

In addition thereto he may allow not exceeding 25 cents as the combined initial and terminal rate for each one-way trip of a three-foot unit of service and 50 cents as a combined initial and terminal rate for each one-way trip of a seven-foot unit of service.

Railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress, on the condition that the mails should be transported over their roads at such price as Congress should by law direct, shall receive only eighty per centum of the compensation otherwise authorized by this section.

The initial and terminal rates provided for herein shall cover expenses of loading and unloading mails, switching, lighting, heating, cleaning mail cars, and all other expenses incidental to station service and required by the Postmaster General in connection with the mails that are not included in the car-mile rate. The allowance for full railway post-office cars, apartment railway post-office cars, and storage cars may be varied in accordance with the approximate difference in their respective cost of construction and maintenance.

In computing the car miles of the full railway post-office cars and apartment railway post-office cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space to be computed in both directions, unless otherwise mutually agreed upon.

In computing the car miles of storage cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space to be computed in both directions, unless the car be used by the company in the return movement, or otherwise mutually agreed upon.

New service and additional service may be authorized at not exceeding the rates herein provided, and service may be reduced or discontinued with pro rata reductions in pay, as the needs of the Postal Service may require: *Provided*, That no additional pay shall be allowed for additional service unless specifically authorized by the Postmaster General.

The Postmaster General is authorized to make special contracts with the railroad companies for the transportation of the mails where in his judgment the conditions warrant the application of higher rates than those herein specified, and make report to Congress of all cases where such special contracts are made and the terms and reasons therefor.

All cars or parts of cars used for the Railway Mail Service shall be of such construction, style, length, and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, maintained, heated, lighted, and cleaned by and at the expense of the railroad companies. No pay shall be allowed for service by any railway post-office car which is not sound in material and construction and which is not equipped with sanitary drinking-water containers and toilet facilities, nor unless such car is regularly and thoroughly cleaned. No pay shall be allowed for service by any wooden full railway

post-office car unless constructed substantially in accordance with the most approved plans and specifications of the Post Office Department for such type of cars, nor for service by any wooden full railway post-office car run in any train between adjoining steel cars, or between the engine and a steel car adjoining. After the first of July, nineteen hundred and seventeen, the Postmaster General shall not approve or allow to be used, or pay for service by, any full railway post-office car not constructed of steel or steel underframe or equally indestructible material; and all full railway post-office cars accepted for this service and contracted for by the railroad companies hereafter shall be constructed of steel. Until July first, nineteen hundred and seventeen in cases of emergency and in cases where the necessities of the service require it, the Postmaster General may provide for service by full railway post-office cars of other than steel or steel underframe construction, and fix therefor such rate of compensation within the maximum herein provided as shall give consideration to the inferior character of construction, and the railroad companies shall furnish service by such cars at such rates so fixed.

Service over property owned or controlled by another company or a terminal company shall be considered service of the railroad company using such property and not that of the other or terminal company: *Provided*, That service over land-grant road shall be paid for as herein provided.

Railroad companies carrying the mails shall furnish all necessary facilities for caring for and handling them while in their custody. They shall furnish all cars or parts of cars used in the transportation and distribution of the mails, except as herein otherwise provided, and place them in stations before the departure of trains at such times and when required to do so. They shall provide station space and rooms for handling, storing, and transfer of mails in transit, including the separation thereof, by packages for connecting lines, and such distribution of registered mail in transit as may be necessary, and for offices for the employees of the Railway Mail Service engaged in such station work when required by the Postmaster General, in which mail from station boxes may be distributed if it does not require additional space.

If any railroad company carrying the mails shall fail or refuse to provide cars or apartments in cars for distribution purposes when required by the Postmaster General, or shall fail or refuse to construct, fit up, maintain, heat, light, and clean such cars and provide such appliances for use in case of accident as may be required by the Postmaster General, it shall be fined such reasonable sum as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General shall in all cases decide upon what trains and in what manner the mails shall be conveyed. Every railroad company carrying the mails shall carry on any train it operates, and with due speed, all mailable matter, equipment, and supplies directed to be carried thereon. If any such railroad company shall fail or refuse to transport the mails, equipment, and supplies when required by the Postmaster General on any train or trains it operates, such company shall be fined such reasonable amount as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General may make deductions from the pay of railroad companies carrying the mails under the provisions of this section for reduction in service or infrequency of service where, in his judgment, the importance of the facilities withdrawn or reduced requires it, and impose fines upon them for delinquencies. He may deduct the price of the value of the service in cases where it is not performed, and not exceeding three times its value if the failure be occasioned by the fault of the railroad company.

The provisions of this section shall apply to service operated by railroad companies partly by railroad and partly by steamboats.

The provision of this section respecting the rates of compensation shall not apply to mails conveyed under special arrangement in freight trains, for which rates not exceeding the usual and just freight rates may be paid, in accordance with the classifications and tariffs approved by the Interstate Commerce Commission.

Railroad companies carrying the mails shall submit, under oath, when and in such form as may be required by the Postmaster General, evidence as to the performance of service.

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

The Postmaster General is authorized, in his discretion, to petition the Interstate Commerce Commission for the determination of a postal carload or less-than-carload rate for transportation of mail matter of the fourth class and periodicals, and may provide for and authorize such transportation, when practicable, at such rates, and it shall be the duty of the railroad companies to provide and perform such service at such rates and on the conditions prescribed by the Postmaster General.

The Postmaster General may, in his discretion, distinguish between the several classes of mail matter and provide for less frequent dispatches of mail matter of the third and fourth classes and periodicals when lower rates for transportation or other economies may be secured thereby without material detriment to the service.

The Postmaster General is authorized to return to the mails, when practicable for the utilization of car space paid for and not needed for the mails, postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the Postal Service.

The Postmaster General, in cases of emergency between October first and April first of any year, may hereafter return to the mails empty mail bags and other equipment theretofore withdrawn therefrom as required by law, and, where such return requires additional authorization of car space under the provisions of this section, to pay for the transportation thereof as provided for herein out of the appropriation for inland transportation by railroad routes.

The Postmaster General may have the weights of mail taken on railroad

mail routes, and computations of the average loads of the several classes of cars and other computations for statistical and administrative purposes made at such times as he may elect, and pay the expense thereof out of the appropriation for inland transportation by railroad routes.

Pending the decision of the Interstate Commerce Commission, as hereinafter provided for, the existing method and rates of railway mail pay shall remain in effect, except on such routes or systems as the Postmaster General shall select, and to the extent he may find it practicable and necessary to place upon the space system of pay in the manner and at the rates provided in this section, with the consent and approval of the Interstate Commerce Commission, in order to properly present to the Interstate Commerce Commission the matters hereinafter referred thereto: *Provided*, That if the final decision of the Interstate Commerce Commission shall be adverse to the space system, and if the rates established by it under whatever method or system is adopted shall be greater or less than the rates under this section, the Postmaster General shall readjust the compensation of the carriers on such selected routes and systems in accordance therewith, from the dates on which the rates named in this section became effective.

All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

The Interstate Commerce Commission is hereby empowered and directed as soon as practicable to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force until changed by the commission after due notice and hearing.

In fixing and determining the fair and reasonable rates for such service the commission shall consider the relation existing between the railroads as public service corporations and the Government, and the nature of such service as distinguished, if there be a distinction, from the ordinary transportation business of the railroads.

The procedure for the ascertainment of said rates and compensation shall be as follows:

Within three months from and after the approval of this Act, or as soon thereafter as may be practicable, the Postmaster General shall file with the commission a statement showing the transportation required of all railway common carriers, including the number, equipment, size, and construction of the cars necessary for the transaction of the business; the character and speed of the trains which are to carry the various kinds of mail; the service, both terminal and en route, which the carriers are to render; and all other information which may be material to the inquiry, but such other information may be filed at any time in the discretion of the commission.

The Postmaster General is authorized to employ such clerical and other assistance as shall be necessary to carry out the provisions of this section, and to rent quarters in Washington, District of Columbia, if necessary,

for the clerical force engaged thereon, and to pay for the same out of the appropriation for inland transportation by railroad routes. The Postmaster General shall file with the commission a comprehensive plan for the transportation of the mails on said railways and shall embody therein what he believes to be the reasonable rate or compensation the said railway carriers should receive.

Thereupon the commission shall give notice of not less than thirty days to each carrier so required to transport mail and render service, and upon a day to be fixed by the commission, not later than thirty days after the expiration of the notice herein required, each of said carriers shall make answer and the commission shall proceed with the hearing as now provided by law for other hearings between carriers and shippers or associations.

All the provisions of the law for taking testimony, securing evidence, penalties, and procedure are hereby made applicable.

For the purpose of determining and fixing rates or compensation hereunder the commission is authorized to make such classification of carriers as may be just and reasonable and, where just and equitable, fix general rates applicable to all carriers in the same classification.

Pending such hearings, and the final determination of the question, if the Interstate Commerce Commission shall determine that it is necessary or advisable, in order to carry out the provisions of this section, to have additional and more frequent weighing of the mails for statistical purposes, the Postmaster General, upon request of the commission, shall provide therefor in the manner now prescribed by law, but such weighing need not be for more than thirty days.

At the conclusion of the hearing the commission shall establish by order a fair, reasonable rate or compensation to be received, at such stated times as may be named in the order, for the transportation of mail matter and the service connected therewith, and during the continuance of the order the Postmaster General shall pay the carrier from the appropriation herein made such rate or compensation.

Either the Postmaster General or any such carrier may at any time after the lapse of six months from the entry of the order assailed apply for a reexamination, and thereupon substantially similar proceedings shall be had with respect to the rate or rates for service covered by said application, provided said carrier or carriers have an interest therein.

For the purposes of this section the Interstate Commerce Commission is hereby vested with all the powers which it is now authorized by law to exercise in the investigation and ascertainment of the justness and reasonableness of freight, passenger, and express rates to be paid by private shippers.

The Interstate Commerce Commission shall allow to railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress on condition that the mails should be transported over their roads at such price as Congress should by law direct only eighty per centum of the compensation paid other railroads for transporting the mails and all service by the railroads in connection therewith.

The existing law for the determination of mail pay, except as herein modified, shall continue in effect until the Interstate Commerce Commission under the provisions hereof fixes the fair, reasonable rate or compensation for such transportation and service.

That the appropriations for inland transportation by railroad routes and for railway post-office car service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, are hereby made available for the purposes of this section.

That it shall be unlawful for any railroad company to refuse to perform mail service at the rates or methods of compensation provided by law when required by the Postmaster General so to do, and for such offense shall be fined \$1,000. Each day of refusal shall constitute a separate offense. [39 Stat. L. 425.]

SEC. 6. [Fourth class mail matter — the parcel post — readjustment of classification, etc.] If the Postmaster General shall find on experience that the classification of articles mailable, as well as the weight limit, or the rates of postage, zone or zones, and other conditions of mailability, under section eight of the Act approved August twenty-fourth, nineteen hundred and twelve, or any of them, are such as to prevent the shipment of articles desirable, or to permanently render the cost of the service greater than the receipts of the revenue therefrom, he is hereby authorized to re-form from time to time such classification, weight limit, rates, zone or zones, or conditions, or either, in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof: *Provided, however,* That before any change is hereafter made in weight limit, rates of postage, or zone or zones, by the Postmaster General, the proposed change shall be approved by the Interstate Commerce Commission after thorough and independent consideration by that body in such manner as it may determine. [39 Stat. L. 431.]

For the Act of Aug. 24, 1912, ch. 389, § 8, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 319; 8 Fed. Stat. Ann. (2d ed.) 181.

An Act Making Appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes.

[Act of March 3, 1917, ch. 162, 39 Stat. L. 1058.]

SEC. 1. [First class post offices — foremen — stenographers.] * * * That there may also be employed at any first-class post offices foremen and stenographers at a salary of \$1,300 or more per annum. [39 Stat. L. 1062.]

[Clerks — appointment — assignment.] * * * That hereafter the appointment and assignment of clerks hereunder shall be so made during each fiscal year as not to involve a greater aggregate expenditure than the sum appropriated; and to enable the Postmaster General to carry out the provisions of this Act and also the Act of March second, nineteen hundred and seven, classifying clerks and city letter carriers in first and second class post offices, he may hereafter exceed the number of clerks appropriated

for for [sic] particular grades: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 1062.]

For the provisions of the Act of March 2, 1907, ch. 2513, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 522; 8 Fed. Stat. Ann. (2d ed.) 522.

First and second class post offices — holidays — special clerks — compensatory time.] * * * That hereafter when the needs of the service require the employment on holidays of "special clerks" in first and second class post offices, they shall be allowed compensatory time on one of the thirty days next following the holiday on which they perform such service. [39 Stat. L. 1062.]

[Postal service — Sundays and holidays — employment — compensatory time.] * * * That hereafter when the needs of the Postal Service require the employment on Sundays or holidays of foremen, watchmen, messengers, and laborers they shall be granted compensatory time in the same manner as provided by law for clerks and carriers in first and second class post offices. [39 Stat. L. 1062.]

[Railway postal clerks — grades — promotions — transfers — salaries.] * * * That hereafter any substitute railway postal clerk shall, after having performed service equivalent to three hundred and thirteen days, be appointed railway postal clerk of grade one, and in computing such service credit shall be allowed for service performed prior to the approval of this Act: *Provided further*, That hereafter when railway postal clerks are transferred from one assignment to another because of changes in the service their salaries shall not be reduced by reason of such change: *Provided further*, That hereafter clerks assigned as clerks in charge of crews consisting of more than one clerk shall be clerks of grades five to ten, inclusive, and may be promoted one grade only after three years' satisfactory and faithful service in such capacity: *Provided further*, That railway postal clerks shall be credited with full time when deadheading under orders of the department, and the appointment and assignment of clerks hereunder shall be so made during the fiscal year as not to involve a greater aggregate expenditure than this sum; and, to enable the Postmaster General to reclassify the salaries of railway postal clerks and make necessary appointments and promotions, he may exceed the number of clerks in such of the grades as may be necessary: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 1065.]

[Railway postal clerks — travel allowances — former Act amended.] * * * That the Act of August twenty-fourth, nineteen hundred and twelve, (Thirty-seventh Statutes, page five hundred and forty-eight), be amended to read as follows: "That hereafter, in addition to the salaries by law provided, the Postmaster General is hereby authorized to make travel allowances in lieu of actual expenses at fixed rates per annum, not exceeding in the aggregate the sum annually appropriated, to railway postal clerks, acting railway postal clerks, and substitute railway postal clerks, including substitute railway postal clerks for railway postal clerks

granted leave with pay on account of sickness, assigned to duty in railway post-office cars, while on duty, after ten hours from the time of beginning their initial run, under such regulations as he may prescribe, and in no case shall such an allowance exceed \$1.20 per day." [39 Stat. L. 1065.]

For the provisions of the Act of Aug. 24, 1912, ch. 389, § 1, amended by the text, see 1914 Supp. Fed. Stat. Ann. 313; 8 Fed. Stat. Ann. (2d ed.) 209.

[Ocean mail service — contracts — American steamships.] * * *

That hereafter the Postmaster General is hereby authorized and empowered to enter into contracts with American citizens for the carrying of the mail between the United States and Great Britain on steamships built in the United States capable of maintaining a speed of thirty knots an hour at sea in ordinary weather and of a gross registered tonnage of not less than thirty-five thousand tons, the said service to commence not more than four years after the contract shall be let. The rate of compensation to be paid for the said ocean mail service shall not exceed the sum of \$8 per mile by the shortest practicable route for each outward voyage. The Postmaster General shall have the right to reject all bids not in his opinion reasonable for the attaining of the purposes named: *Provided further*, That all of the provisions of the Act of March third, eighteen hundred and ninety-one, entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," so far as they are not inconsistent herewith shall control and apply to the methods to be used and contracts to be made hereunder. [39 Stat. L. 1066.]

For the Act of March 3, 1891, ch. 519, mentioned in the text, see 5 Fed. Stat. Ann. 927; 8 Fed. Stat. Ann. (2d ed.) 218.

SEC. 2. [Contracts for mail transportation — by whom signed — sealing.] Contracts made in the Post Office Department for the various classes of mail transportation may, upon order of the Postmaster General, be signed in the place and stead of the Postmaster General by the Assistant Postmaster General who is charged with the supervision of the mail transportation involved, and such officer shall attest his signature to such contracts by the seal of the Post Office Department. [39 Stat. L. 1068.]

Section 3 of this Act relates to the fiscal year 1918 only and is omitted.

SEC. 4. [Distribution of supplies — auditing and accounting.] In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may hereafter designate district and central offices in such districts through which supplies shall be distributed and accounts rendered. [39 Stat. L. 1069.]

[SEC. 1.] [Distribution of supplies — auditing and accounting — designation of offices.] * * * In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may designate districts and central offices in such districts through which supplies shall be distributed and accounts audited, but in no case

shall the postmaster at the central station be given authority to abolish offices, to change officers or employees in offices included in such district. [39 Stat. L. 1110.]

This is from the Legislative, Executive and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Navy mail clerks — designation of enlisted men of Navy or Marine Corps.] * * * That the provisions of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, pages four hundred and seventeen and four hundred and eighteen), as amended by the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and sixty), are hereby extended to authorize the designation of enlisted men of the Navy or Marine Corps as Navy mail clerks and assistant Navy mail clerks with expeditionary forces on shore. [39 Stat. L. 1188.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the provisions of the Act of May 27, 1908, ch. 206, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 525.

For the provisions of the amending Act of Aug. 24, 1909, ch. 389, § 11, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 322.

For said Act of May 27, 1908, ch. 206, § 1, as amended by said Act of Aug. 24, 1909, ch. 389, § 11, see 8 Fed. Stat. Ann. (2d ed.) 74.

TITLE XI.

POSTAL RATES.

SEC. 1100. [First class mail matter.] That the rate of postage on all mail matter of the first class, except postal cards, shall thirty days after the passage of this Act be, in addition to the existing rate, 1 cent for each ounce or fraction thereof: *Provided*, That the rate of postage on drop letters of the first class shall be 2 cents an ounce or fraction thereof. Postal cards, and private mailing or post cards when complying with the requirements of existing law, shall be transmitted through the mails at 1 cent each in addition to the existing rate.

That letters written and mailed by soldiers, sailors, and marines assigned to duty in a foreign country engaged in the present war may be mailed free of postage, subject to such rules and regulations as may be prescribed by the Postmaster General. [— Stat. L. —.]

The foregoing section 1100 and the following sections 1101–1109 constitute a part of "Title XI.—Postal Rates" of an Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." For a reference to the entire Act see the notes to section 1000 thereof, given in INTERNAL REVENUE, *ante*, p. 382. Sections 1300 and 1302, given in INTERNAL REVENUE, *ante*, p. 386, respectively provide that the invalidity of any part of the Act shall not affect the validity of the remainder, and that unless otherwise specified the Act shall become effective on the day following its passage.

For section 1110 of this Act, see INTOXICATING LIQUORS, *ante*, p. 394.

SEC. 1101. [Second class matter.] That on and after July first, nineteen hundred and eighteen, the rates of postage on publications entered as

second-class matter (including sample copies to the extent of ten per centum of the weight of copies mailed to subscribers during the calendar year) when sent by the publisher thereof from the post office of publication or other post office, or when sent by a news agent to actual subscribers thereto, or to other news agents for the purpose of sale:

(a) In the case of the portion of such publication devoted to matter other than advertisements, shall be as follows: (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents per pound or fraction thereof; (2) on and after July first, nineteen hundred and nineteen, $1\frac{1}{2}$ cents per pound or fraction thereof.

(b) In the case of the portion of such publication devoted to advertisements the rates per pound or fraction thereof for delivery within the several zones applicable to fourth-class matter shall be as follows (but where the space devoted to advertisements does not exceed five per centum of the total space, the rate of postage shall be the same as if the whole of such publication was devoted to matter other than advertisements): (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, for the first and second zones, $1\frac{1}{4}$ cents; for the third zone, $1\frac{1}{2}$ cents; for the fourth zone, 2 cents; for the fifth zone, $2\frac{1}{4}$ cents; for the sixth zone, $2\frac{1}{2}$ cents; for the seventh zone, 3 cents; for the eighth zone, $3\frac{1}{4}$ cents; (2) on and after July first, nineteen hundred and nineteen, and until July first, nineteen hundred and twenty, for the first and second zones, $1\frac{1}{2}$ cents; for the third zone, 2 cents; for the fourth zone, 3 cents; for the fifth zone, $3\frac{1}{2}$ cents; for the sixth zone, 4 cents; for the seventh zone, 5 cents; for the eighth zone, $5\frac{1}{2}$ cents; (3) on and after July first, nineteen hundred and twenty, and until July first, nineteen hundred and twenty-one, for the first and second zones, $1\frac{3}{4}$ cents; for the third zone, $2\frac{1}{2}$ cents; for the fourth zone, 4 cents; for the fifth zone, $4\frac{3}{4}$ cents; for the sixth zone, $5\frac{1}{2}$ cents; for the seventh zone, 7 cents; for the eighth zone, $7\frac{3}{4}$ cents; (4) on and after July first, nineteen hundred and twenty-one, for the first and second zones, 2 cents; for the third zone, 3 cents; for the fourth zone, 5 cents; for the fifth zone, 6 cents; for the sixth zone, 7 cents; for the seventh zone, 9 cents; for the eighth zone, 10 cents;

(c) With the first mailing of each issue of each such publication, the publisher shall file with the postmaster a copy of such issue, together with a statement containing such information as the Postmaster General may prescribe for determining the postage chargeable thereon. [— *Stat L.* —.]

See the note to the preceding section 1100 of this Act.

SEC. 1102. [Daily newspapers — second class mail matter — zones.] That the rate of postage on daily newspapers, when the same are deposited in a letter-carrier office for delivery by its carriers, shall be the same as now provided by law; and nothing in this title shall affect existing law as to free circulation and existing rates on second-class mail matter within the county of publication: *Provided*, That the Postmaster General may hereafter require publishers to separate or make up to zones in such a manner as he may direct all mail matter of the second class when offered for mailing. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1103. [Newspapers and periodicals of religious, educational, etc. nature.] That in the case of newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations, not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, the second-class postage rates shall be, irrespective of the zone, in which delivered (except when the same are deposited in a letter carrier office for delivery by its carriers, in which case the rates shall be the same as now provided by law), $1\frac{1}{8}$ cents a pound or fraction thereof on and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, and on and after July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents a pound or fraction thereof. The publishers of such newspapers or periodicals before being entitled to the foregoing rates shall furnish to the Postmaster General, at such times and under such conditions as he may prescribe, satisfactory evidence that none of the net income of such organization inures to the benefit of any private stockholder or individual. [— Stat. L. —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1104. [Total weight of edition not in excess of one pound.] That where the total weight of any one edition or issue of any publication mailed to any one zone does not exceed one pound, the rate of postage shall be 1 cent. [— Stat. L. —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1105. [Zone rates — entire bulk mailed.] The zone rates provided by this title shall relate to the entire bulk mailed to any one zone and not to individually addressed packages. [— Stat. L. —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1106. [Newspaper or periodical mailed by other than publisher, etc.] That where a newspaper or periodical is mailed by other than the publisher or his agent or a news agent or dealer, the rate shall be the same as now provided by law. [— Stat. L. —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1107. [Payments by Postmaster General.] That the Postmaster General, on or before the tenth day of each month, shall pay into the general fund of the Treasury an amount equal to the difference between the estimated amount received during the preceding month for the transportation of first class matter through the mails and the estimated amount which would have been received under the provisions of the law in force at the time of the passage of this Act. [— Stat. L. —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1108. [Salaries of postmasters.] That the salaries of postmasters at offices of the first, second, and third classes shall not be increased after

July first, nineteen hundred and seventeen, during the existence of the present war. The compensation of postmasters at offices of the fourth class shall continue to be computed on the basis of the present rates of postage. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1109. [Postmasters on leave for military purposes — clerk hire.] That where postmasters at offices of the third class have been since May first, nineteen hundred and seventeen, or hereafter are granted leave without pay for military purposes, the Postmaster General may allow, in addition to the maximum amounts which may now be allowed such officers for clerk hire, in accordance with law, an amount not to exceed fifty per centum of the salary of the postmaster. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

For section 1110 of this Act, see INTOXICATING LIQUORS, *ante*, p. 394.

[SEC. 1.] [Mail matter relating to naturalization — free postage — penalty for abuse of privilege.] * * * That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Bureau of Naturalization by clerks of State or Federal courts, addressed to the Department of Labor, or the Bureau of Naturalization, or to any official thereof, and indorsed "Official Business," shall be transmitted free of postage, and by registered mail if necessary, and so marked: *Provided further*, That if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package, or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of \$300, to be prosecuted in any court of competent jurisdiction. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

An Act Authorizing postage rates on aeroplane mail.

[*Act of May 10, 1918, ch. —, — Stat. L. —.*]

[Postage — aeroplane mail.] That the Postmaster General, in his discretion, may require the payment of postage on mail carried by aeroplane at not exceeding 24 cents per ounce or fraction thereof.

[Enlisted men of Navy or Marine Corps as mail clerks.] * * * That the provisions of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, pages four hundred and seventeen and four hundred and eighteen), as amended by the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and sixty), and as amended by the Act of March fourth, nineteen hundred

and seventeen (Thirty-ninth Statutes, page eleven hundred and eighty-eight), are hereby extended to authorize the designation of enlisted men of the Navy or Marine Corps as Navy mail clerks and assistant Navy mail clerks for duty at stations and shore establishments under the jurisdiction of the Navy Department where the services of such mail clerks and assistant mail clerks are necessary. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.
 For Act of May 27, 1908, ch. 206, § 1, as amended by Act of Aug. 24, 1912, ch. 389,
 § 11, see 1914 Supp. Fed. Stat. Ann. 322; 8 Fed. Stat. Ann. (2d ed.) 74.
 For Act of March 4, 1917, ch. 180, see *supra*, p. 658.

An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[*Act of July 2, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Inspectors — per diem allowances.]** * * * For per diem allowance of inspectors in the field while actually traveling on official business away from their homes, their official domiciles, and their headquarters, at a rate to be fixed by the Postmaster General, not to exceed \$4 per day: *Provided*, That the Postmaster General may, in his discretion, allow inspectors per diem while temporarily located at any place on business away from their homes or their designated domiciles for a period not exceeding twenty consecutive days at any one place, and make rules and regulations governing the foregoing provisions relating to per diem: *And provided further*, That no per diem shall be paid to inspectors receiving annual salaries of \$2,000 or more, except the thirty-two inspectors receiving \$2,100 each. [— *Stat. L.* —.]

[Sunday or holiday service — compensation.] * * * That hereafter when any employee in the Postal Service under the law is entitled to compensatory time for Sunday or holiday service, if he so elects, he may be paid for overtime in lieu thereof. [— *Stat. L.* —.]

[Allowances to post offices — amount as governed by postmaster's salary.] That hereafter no allowance in excess of \$300 shall be made where the salary of the postmaster is \$1,000, \$1,100, or \$1,200; nor in excess of \$400 where the salary of the postmaster is \$1,300, \$1,400, or \$1,500; and that no allowance in excess of \$500 shall be made where the salary of the postmaster is \$1,600 or \$1,700; nor in excess of \$800 where the salary of the postmaster is \$1,800 or \$1,900. [— *Stat. L.* —.]

[Rent for post-office quarters — appropriation available.] * * * That hereafter the Postmaster General may, in the disbursement of the appropriation for such purposes, apply a part thereof to the purpose of leasing premises for the use of post offices of the first, second, and third classes at a reasonable annual rental, to be paid quarterly for a term not exceeding ten years; and that there shall not be allowed for the use of any

third-class post office for rent a sum in excess of \$500, nor more than \$100 for fuel and light, in any one year. [— *Stat. L.* —.]

[Transportation of mail — carrying by freight or express.] * * *
That hereafter, when there is no competition on a route and the rate of compensation asked is excessive, or no proposal is received, the Postmaster General may require that the mails be carried as freight or express, and it shall be unlawful for any common carrier by water to refuse to carry the mails when so required, and the penalty for such offense shall be a fine of \$500. Each day of refusal shall constitute a separate offense. [— *Stat. L.* —.]

[Transportation of mail — electric and cable cars.—rate.] * * *
For inland transportation of mail by electric and cable cars, * * * *Provided*, That the rate of compensation to be paid per mile shall not exceed the rate now paid to companies performing such service, except that the Postmaster General, in cases where the quantity of mail is large and the number of exchange points numerous, may, in his discretion, authorize payment for closed-pouch service at a rate per mile not to exceed one-third above the rate per mile now paid for closed-pouch service, and for mail cars and apartments carrying the mails not to exceed the rate of 1 cent per linear foot per car-mile of travel: *Provided further*, That the rates for electric car service on routes over twenty miles in length outside of cities shall not exceed the rates paid for service on steam railroads: *Provided, however*, That not to exceed \$25,000 of the sum hereby appropriated may be expended in the discretion of the Postmaster General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise, and not to exceed \$100,000 of this appropriation may be expended for regulation screen or motor screen wagon service which may be authorized in lieu of electric or cable car service: *Provided further*, That the Interstate Commerce Commission is hereby empowered and directed as soon as practicable to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of mail matter by urban and interurban electric railway common carriers and the service connected therewith, prescribing the method or methods by weight or space, or both, or otherwise, for ascertaining such rate or compensation and to publish same, and orders so made and published shall continue in force until changed by the commission after due notice and hearing: *And provided further*, That it shall be unlawful for any urban or interurban electric railroad to refuse to perform mail service at the rates or methods of compensation thus provided for such service when required by the Postmaster General so to do, and for such offense shall be fined \$100. Each day of refusal shall constitute a separate offense. [— *Stat. L.* —.]

[Rural delivery service — pay of carriers.] * * * That on and after July first, nineteen hundred and eighteen, rural carriers assigned to horse-drawn vehicle routes on which daily service is performed shall receive \$24 per mile per annum for each mile said routes are in excess of twenty-four miles or major fraction thereof, based on actual mileage, and rural carriers

assigned to horse-drawn vehicle routes on which triweekly service is performed shall receive \$12 per mile per annum for each mile said routes are in excess of twenty-four miles or major fraction thereof based on actual mileage: *Provided further*, That the pay of carriers who furnish and maintain their own motor vehicles and who serve routes not less than fifty miles in length may be fixed at not exceeding \$2,160 per annum. [— *Stat. L.* —.]

SEC. 2. [Pay of post office employees — postal clerks.] That during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the annual salaries fixed by law for assistant postmasters at first and second class post offices, and supervisory officials, whose compensation is \$2,200 and less per annum, shall be increased \$200, and those whose compensation is in excess of \$2,200 shall be increased five per centum; that clerks in first and second class post offices and letter carriers in the City Delivery Service shall be divided into six grades, as follows: First grade, salary \$1,000; second grade, salary \$1,100; third grade, salary \$1,200; fourth grade, salary \$1,300; fifth grade, salary \$1,400; sixth grade, salary \$1,500. Clerks and carriers shall be promoted successively to the sixth grade: *Provided*, That on July first, nineteen hundred and eighteen, clerks in first and second class post offices and letter carriers in the City Delivery Service who are in grades two, three, four, five, and six, under the Act of March second, nineteen hundred and seven, as amended, shall pass automatically from such grades and the salaries they receive thereunder to the new grades, one, two, three, four, and five, respectively, with the salaries provided for such grades in this Act: *Provided further*, That the salaries of railway postal clerks shall be graded as follows: Grade one at \$1,100; grade two at \$1,200; grade three at \$1,300; grade four at \$1,400; grade five at \$1,500; grade six at \$1,600; grade seven at \$1,700; grade eight at \$1,800; grade nine at \$1,900; grade ten at \$2,000.

The Postmaster General shall classify and fix the salaries of railway postal clerks, under such regulations as he may prescribe, in the grades provided by law; and for the purpose of organization and establishing maximum grades to which promotions may be made successively, as hereinafter provided, he shall classify railway post offices, terminal railway post offices, and transfer offices with reference to their character and importance in three classes, with salary grades as follows:

Class A, \$1,100 to \$1,400; class B, \$1,100 to \$1,500; and Class C, \$1,100 to \$1,700. He may assign to the offices of division superintendents and chief clerks such railway postal clerks as may be necessary, and fix their salaries within the grades provided by law without regard to the classification of railway post offices: *Provided*, That on July first, nineteen hundred and eighteen, railway postal clerks shall pass automatically from the grades they are in and the salaries they receive under the Act of August twenty-fourth, nineteen hundred and twelve, to the corresponding grade, with salaries provided for in this Act: *Provided*, That the classifications and increases of salaries provided for in this section shall not be continued beyond the fiscal year ending June thirtieth, nineteen hundred and nineteen: *Provided further*, That the salary of clerks, carriers, and railway postal clerks shall be increased during the fiscal year nineteen hundred

and nineteen, not more than \$200: *Provided further*, That the classifications herein provided for shall not become effective until July first, nineteen hundred and eighteen: *Provided further*, That the salaries of such other employees fixed by law or paid from lump-sum appropriations provided for in this Act, including laborers in the Railway Mail Service, who receive \$800 per annum or less shall be increased twenty per centum per annum; those who receive in excess of \$800 and not more than \$1,500 shall be increased fifteen per centum per annum; and those who receive in excess of \$1,500 and not more than \$2,200 shall be increased ten per centum per annum. Rural carriers assigned to horse-drawn vehicle routes now receiving a compensation of \$1,200 or less per annum, exclusive of mileage allowance for miles on routes over twenty-four miles in length, shall receive, in addition thereto, twenty per centum of the amount of such compensation. Such increases shall not apply to the special assistant to the Attorney General appropriated for in this Act and to postmasters at offices of the first, second, and third classes: *Provided further*, That postmasters of the fourth class shall receive the same compensation as now provided by law, except that they shall receive one hundred per centum of the cancellations of the first \$80 or less per quarter: *Provided further*, That, if the compensation does not exceed \$50 for any one quarter, fourth-class postmasters shall be allowed an increase of twenty per centum of the compensation allowed under existing law: *Provided further*, That no office shall be advanced to third-class by reason of the temporary increases herein provided: *Provided further*, That hereafter substitute, temporary, or auxiliary clerks and letter carriers at first and second-class post offices shall be paid at the rate of 40 cents an hour: *Provided further*, That the provisions of this section shall not apply to employees who receive a part of their pay from any outside sources under cooperative arrangement with the Post Office Department, or to employees who serve voluntarily or receive only a nominal compensation: *And provided further*, That the increased compensation, at the rate of five per centum and ten per centum for the fiscal year ending June thirtieth, nineteen hundred and eighteen, shall not be computed as salary in construing this section. So much as may be necessary for the increases provided for in this Act is hereby appropriated. [— *Stat. L.* —.]

For Act of March 2, 1907, ch. 2513, see 8 Fed. Stat. Ann. (2d ed.) 71.

For Act of Aug. 24, 1912, ch. 389, § 7, see 1914 Supp. Fed. Stat. Ann. 318, 8 Fed. Stat. Ann. (2d ed.) 209.

SEC. 3. [Watchmen, messengers and laborers — postal clerks — hours of labor — Sundays and holidays.] That hereafter watchmen, messengers, and laborers in first and second class post offices, and railway postal clerks assigned to terminal railway post offices and transfer offices, shall be required to work not more than eight hours a day, and that the eight hours of service shall not extend over a longer period than ten consecutive hours, and that in cases of emergency or if the needs of the service require they may be required to work in excess of eight hours a day, and for such additional services they shall be paid in proportion to their salaries as fixed by law: *Provided*, That hereafter when the needs of the Postal Service require the employment on Sundays and holidays of railway postal clerks

assigned to terminal railway post offices and transfer offices, they shall be granted compensatory time in the same manner as provided by law for clerks and carriers in first and second class offices. [— *Stat. L.* —.]

Sections 4 and 5 of this Act are omitted because they are of no general value.

SEC. 6. [Surety against losses — United States liberty loan bonds.] The Postmaster General may, under such rules and regulations as he shall prescribe, accept United States liberty loan bonds in lieu of either corporate or personal surety from contractors, officers, and employees of the Postal Service to indemnify the Government against losses resulting from the failure of any contractor, officer, or employee of the Postal Service to properly discharge his official duty. [— *Stat. L.* —.]

SEC. 7. [Transportation of food products — motor vehicle truck routes.] That to promote the conservation of food products and to facilitate the collection and delivery thereof from producer to consumer, and the delivery of articles necessary in the production of such food products to the producers, the Postmaster General is hereby authorized to conduct experiments in the operation of motor-vehicle truck routes in the vicinity of such cities of the United States as he may select, and under such rules and regulations as he may prescribe, and the cost of such experiments, not exceeding \$300,000, may be paid by the Postmaster General out of any unexpended appropriations of the Postal Service, and the Postmaster General shall report the result of such experiments to the Congress at the earliest practicable date. [— *Stat. L.* —.]

SEC. 8. [Transportation of mails — aeroplanes and automobiles.] That the Secretary of War may, in his discretion, deliver and turn over to the Postmaster General from time to time, and without charge therefor, for use in the Postal Service, such aeroplanes and automobiles or parts thereof as may prove to be, or as shall become, unsuitable for the purposes of the War Department but suitable for the use of the Postal Service; and the Postmaster General is hereby authorized to use the same, in his discretion, in the transportation of the mails and to pay the necessary expenses thereof out of the appropriation for inland transportation by steamboat or other power boat or by aeroplanes or star route. [— *Stat. L.* —.]

SEC. 9. [Employees in military or naval service — reemployment on discharge from service.] Employees, including substitute employees, of the Postal Service who have entered the military or naval service of the United States or who shall hereafter enter it during the existence of the present war, shall, when honorably discharged from such service, be reassigned to their duties in the Postal Service at the salary to which they would have been automatically promoted had they remained in the Postal Service, provided they are physically and mentally qualified to perform the duties of such positions. [— *Stat. L.* —.]

Section 10 is omitted as it concerns merely the adjustment of certain claims and has no general provision.

For section 11, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 12. [Postal savings depository — balance to credit of any one person — non-interest paying deposits.] That hereafter the balance to the credit of any one person in a postal-savings depository, exclusive of accumulated interest, shall not exceed \$2,500. Non-interest paying deposits shall not be accepted. All laws inconsistent herewith are hereby repealed. [— *Stat. L.* —.]

SEC. 13. [Postal savings depositories — restriction of deposits — cards for small amounts — savings stamps.] That section six of the Act approved June twenty-fifth, nineteen hundred and ten, is hereby further amended so that the proviso in said section shall read as follows:

“ Provided, That in order that smaller amounts may be accumulated for deposit, any person may purchase for 10 cents, from any postal-savings depository, specially prepared adhesive stamps to be known as ‘postal-savings stamps,’ and attach them to a card which shall be furnished for the purpose. A card with ten postal-savings stamps affixed shall be accepted as a deposit of \$1 either in opening an account or in adding to an existing account, or may be redeemed in cash. [— *Stat. L.* —.]

For Act of June 25, 1910, ch. 243, § 6, see 1912 Supp. Fed. Stat. Ann. 295; 8 Fed. Stat. Ann. (2d ed.) 243.

[SEC. 1.] [Assignment of employees by Postmaster General.] * * *
The Postmaster General shall assign to the several bureaus, offices, and divisions of the Post Office Department such number of the employees herein authorized as may be necessary to perform the work required therein; and he shall submit a statement showing such assignments and the number employed at the various salaries in the annual Book of Estimates following the estimate for salaries in the Post Office Department.

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

PRESIDENT

Act of Feb. 14, 1917, ch. —, 667.

Threats against President — Punishment, 667.

An Act To punish persons who make threats against the President of the United States.

[*Act of Feb. 14, 1917, ch. —, — Stat. L. —.*]

[Threats against President — punishment.] That any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States,

or who knowingly and wilfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding \$1,000 or imprisoned not exceeding five years, or both. [— *Stat. L.* —.]

Sufficiency of indictments.—In *Clark v. U. S.*, 250 Fed. 449, plaintiff in error was convicted under this Act for the use of the following language, alleged by the indictment to have been with reference to the President: "Wilson is a wooden-headed son of a bitch. I wish Wilson was in hell, and if I had the power I would put him there." It was held that a motion to quash the indictment was properly overruled by the court below.

In *U. S. v. French*, 243 Fed. 785, an indictment under this Act set out letters passing from the defendant to another person as follows: "Dear Sir: if the german people can pay \$20,000.00 for Wilson [the President of the United States] wholesale fires, or soldier poisoning answer yes by cutting or having 6 of the Spanish banuts off at roots, I mean the ones on front of lot close to corner of gate way. A pro-Jerman Anarclist." And also the following: "I have an invention that will destroy an entire fleet, Navy without a noise or shot, I can burn cities

and poison thousands. I am not crazy or a faker but can produce the goods lets get together." It was held that these letters did not separately or taken together contain a threat to take the life of the President, or to do him bodily harm, and that a demurrer to the indictment should be sustained.

In *U. S. v. Stickrath*, 242 Fed. 151, the indictment charged that the defendant on a certain date "did unlawfully, knowingly, and wilfully make a threat against the President of the United States, to wit, a threat to take the life of or to inflict bodily harm upon the said President of the United States, said threat being then and there uttered and spoken by the said Pemberton W. Stickrath in words and substance as follows, to wit: 'President Wilson ought to be killed. It is a wonder some one has not done it already. If I had an opportunity, I would do it myself'—contrary to the form of the statute," etc. It was held in demurrer that the indictment was sufficient.

PRISONS AND PRISONERS

Act of July 10, 1918, ch. —, 668.

Sec. 1. United States Penitentiary, Atlanta, Georgia — Manufacture of Supplies for Use of Government — Establishment of Factories, 668.

2. Sale of Manufactured Articles — Disposition of Proceeds, 669.

3. Payment to Inmates or Dependents of Pecuniary Earnings, 669.

4. Appropriation for Purchase of Machinery and Other Equipment, 669.

5. Working Capital — Creation of Fund, 669.

6. Report to Congress, 670.

7. Working Capital — Disbursement, 670.

8. Products of Industries — Limitation on Disposition, 670.

9. Repeal of Inconsistent Laws, 670.

An Act To equip the United States Penitentiary, Atlanta, Georgia, for the manufacture of supplies for the use of the Government, for the compensation of prisoners for their labor, and for other purposes.

[*Act of July 10, 1918, ch. —, — Stat. L.* —.]

[**SEC. 1.**] [United States Penitentiary, Atlanta, Georgia — manufacture of supplies for use of government — establishment of factories.] That the Attorney General of the United States is authorized and directed to establish, equip, maintain, and operate at the United States Penitentiary, Atlanta, Georgia, a factory or factories for the manufacture of cotton

fabrics to supply the requirements of the War and Navy Departments, the Shipping Corporation, cotton duck suitable for tents and other army purposes and canvas for mail sacks and for the manufacture of mail sacks and other similar mail-carrying equipment for the use of the United States Government. The factory or factories shall not be so operated as to abolish any existing Government workshop or curtail the production within its present limits of any such Government workshop, and the articles so manufactured shall be sold only to the Government of the United States.

The Attorney General is hereby further authorized and directed to acquire by purchase or condemnation proceedings such tracts of land at such points as he may determine, at a total cost of not to exceed \$200,000, which may be cleared, graded, and cultivated. And the Attorney General is authorized to employ the inmates of the institution herein mentioned under such regulations as he may prescribe in the work of clearing, grading, and cultivation of such acquired tracts of land. The products of any such agricultural development, including live stock, shall be utilized in said penitentiary or be sold to the Government of the United States for the use of the military and naval forces of the United States. [— *Stat. L.*—.]

SEC. 2. [Sale of manufactured articles — disposition of proceeds.] That articles so manufactured shall be sold at the current market prices as determined by the Attorney General or his authorized agent, and all moneys or reimbursements received from such sales shall be deposited to the credit of the working capital fund created by this Act. [— *Stat. L.* —.]

SEC. 3. [Payment to inmates or dependents of pecuniary earnings.] That the Attorney General is hereby authorized and empowered to provide for the payment to the inmates or dependents upon inmates of said penitentiary such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe. Such earnings shall be paid out of the working capital fund. [— *Stat. L.* —.]

SEC. 4. [Appropriation for purchase of machinery and other equipment.] That there is authorized to be appropriated the sum of \$650,000 for the purchase of machinery and other equipment to carry out the purposes of this Act. [— *Stat. L.* —.]

SEC. 5. [Working capital — creation of fund.] That there is created a fund, to be known as the working capital, which shall be available for the carrying on the industrial enterprise authorized herein or which may be authorized hereafter by law to be carried on in said penitentiary. The working capital shall consist of the sum of \$150,000, which sum is authorized to be appropriated. The receipts from the sale of the products or by-products of the said industries and the sale of condemned machinery or equipment shall be credited to the working capital fund and be available for appropriation by Congress, annually, for the purposes set forth in this Act. [— *Stat. L.* —.]

SEC. 6. [Report to Congress.] That at the opening of each regular session of Congress the Attorney General shall make a detailed report to Congress of the receipts and expenditures made hereunder, the quantity of material of different kinds bought or otherwise acquired and used, the number of persons employed, the hours of labor and the wages paid, the amount and kind of goods manufactured, and the prices paid therefor; also the agricultural products grown or produced on land owned or cultivated by or under the direction of the Attorney General or by the authorities of said penitentiary, the amount used therein, the amount sold, the prices, and total amount received therefor. [— *Stat. L.* —.]

SEC. 7. [Working capital — disbursement.] That said working capital shall be disbursed under the direction of the Attorney General and shall be available for the purchase, repair, or replacement of machinery or equipment, for the purchase of raw materials or parts, for the employment of necessary civilian officers and employees at the penitentiary and in Washington, for the repair and maintenance of buildings and equipment, and for all other necessary expenses in carrying out the provisions of this Act. [— *Stat. L.* —.]

SEC. 8. [Products of industries — limitation on disposition.] That the products of said industries shall not be disposed of except as provided in this Act. [— *Stat. L.* —.]

SEC. 9. [Repeal of inconsistent laws.] That all laws and parts of laws to the extent that they are in conflict with this Act are repealed. [— *Stat. L.* —.]

PRIVATE LAND CLAIMS (COURT OF)

Act of July 3, 1916, ch. 216, 670.

Filing Claims — Extension of Time — Former Act Amended, 670.

An Act To amend an Act entitled “An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories,” approved March third, eighteen hundred and ninety-one, and the Acts amendatory thereto, approved February twenty-first, eighteen hundred and ninety-three, June twenty-seventh, eighteen hundred and ninety-eight, and February twenty-sixth, nineteen hundred and nine.

[*Act of July 3, 1916, ch. 216, 39 Stat. L. 342.*]

[Filing claims — extension of time — former Act amended.] That section eighteen of an Act entitled “An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories,” approved March third, eighteen hundred and ninety-one, as amended by the Act approved February twenty-first,

eighteen hundred and ninety-three, and by the Act approved June twenty-seventh, eighteen hundred and ninety-eight, and by the Act approved February twenty-sixth, nineteen hundred and nine, be, and the same is hereby amended by striking out the words "before the fourth day of March, nineteen hundred and ten," and inserting in lieu thereof the words "before the fourth day of March, nineteen hundred and seventeen," so that the first clause of said section shall read as follows, namely:

"That all claims arising under either of the two next preceding sections of this Act shall be filed with the surveyor general of the proper State or Territory before the fourth day of March, nineteen hundred and seventeen, and no claim not so filed shall be valid."

Provided, That the extension herein granted shall not apply to lands within the limits of a confirmed grant or embraced in any entry completed under the public land laws prior to filing of a claim hereunder, nor shall its provision extend to persons holding under assignments made after March third, nineteen hundred and one. [39 Stat. L. 342.]

For the Act of March 3, 1891, ch. 539, § 18, as amended by the Act of Feb. 21, 1893, ch. 149, and June 27, 1898, ch. 504, amended by this Act, see 6 Fed. Stat. Ann. 64.

For the Act of Feb. 26, 1909, ch. 212, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 530.

For a reference to the Act establishing the Court of Private Land Claims mentioned in the text, and the various Acts amendatory thereof, see the note to R. S. sec. 453, given in PUBLIC LANDS, 8 Fed. Stat. Ann. (2d ed.) 491.

PUBLIC CONTRACTS

Act of June 15, 1917, ch. —, 670.

Sec. 1. Contracts to Be in Writing — R. S. Sec. 3744 Amended, 671.

Act of Oct. 6, 1917, ch. —, 671.

Sec. 5. Contracts Relating to Army and Navy Supplies — Advance Payments, 671.

[SEC. 1.] [Contracts to be in writing — R. S. sec. 3744 amended.] * * * Section thirty-seven hundred and forty-four, Revised Statutes, is hereby amended by adding the following at the end of the last sentence: "*Provided*, That the Secretary of War or the Secretary of the Navy may extend the time for filing such contracts in the returns office of the Department of the Interior to ninety days whenever in their opinion it would be to the interest of the United States to follow such a course." [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

For R. S. sec. 3744, amended by the text, see 6 Fed. Stat. Ann. 132; 8 Fed. Stat. Ann. (2d ed.) 361.

SEC. 5. [Contracts relating to army and navy supplies — advance payments.] That the Secretary of War and the Secretary of the Navy are authorized, during the period of the existing emergency, from appropriations available therefor to advance payments to contractors for supplies for

their respective departments in amounts not exceeding thirty per centum of the contract price of such supplies: *Provided*, That such advances shall be made upon such terms as the Secretary of War and the Secretary of the Navy, respectively, shall prescribe and they shall require adequate security for the protection of the Government for the payments so made. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

PUBLIC DEBT

Act of March 3, 1917, ch. 159, 673.

Sec. 400. Bonds—Issue for Specially Designated Expenditures—Character—Redemption, 673.

401. Loans—Certificates of Indebtedness—Counterfeiting—Former Act Amended, 674.

Res. of March 4, 1917, ch. 191, 674.

Bonds for Naval Expenditures—Character, 674.

Act of April 24, 1917, ch. — (“First Liberty Bond Act”), 675.

Sec. 1. Bond Issue for National Security and Defense—Amount—Form—Sale, 675.

2. Establishment of Credits for Foreign Governments—Foreign Bonds—Purchase, 676.

3. Obligations of Foreign Governments—Sale, 676.

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SEC. 400. [Bonds — issue for specially designated expenditures — character — redemption.] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as in his judgment may be required to meet public expenditures on account of the Mexican situation, the construction of the armorplate plant, the construction of the Alaskan Railway, and the purchase of the Danish West Indies, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States not exceeding in the aggregate \$100,000,000, in such form as he may prescribe, bearing interest payable quarterly at a rate not exceeding three per centum per annum; and such bonds shall be payable, principal and interest, in United States gold coin of the present standard of value, and both principal and interest shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority, and shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks: *Provided*, That such bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving all citizens of the United States an equal opportunity therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same: *And provided further*, That in addition to such issue of bonds, the Secretary of the Treasury may prepare and issue for the purposes specified in this section any portion of the bonds of the United States now available for issue under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine: *And provided further*, That the issue of bonds under authority of this Act and any Panama Canal bonds hereafter issued under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, shall be made redeemable and payable at such times

within fifty years after the date of their issue as the Secretary of the Treasury, in his discretion, may deem advisable. [39 Stat. L. 1002.]

The foregoing section 400 and the following section 401 are a part of Title IV of an Act of March 3, 1917, ch. 159, entitled "An Act To provide revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications and for other purposes." For other sections of this Act see INTERNAL REVENUE, *ante*, pp. 310, 311.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

SEC. 401. [Loans — certificates of indebtedness — counterfeiting — former Act amended.] That section thirty-two of an Act entitled "An Act providing ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, as amended by section forty of an Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"SEC. 32. That the Secretary of the Treasury is authorized to borrow, from time to time, at a rate of interest not exceeding three per centum per annum, such sum or sums as, in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form and in such denominations as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided*, That the sum of such certificates outstanding shall at no time exceed \$300,000,000, and the provisions of existing law respecting counterfeiting and other fraudulent practices are hereby extended to the bonds and certificates of indebtedness authorized by this act." [39 Stat. L. 1003.]

See the notes to the preceding section 400 of this Act.

For the Act of June 13, 1898, ch. 448, § 32, amended by this Act, see 6 Fed. Stat. Ann. 138; 8 Fed. Stat. Ann. (2d ed.) 414.

For the amendatory Act of Aug. 5, 1909, ch. 6, § 40, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834.

Joint Resolution To expedite the delivery of materials, equipment, and munitions, and to secure more expeditious construction of ships.

[*Res. of March 4, 1917, ch. 191, 39 Stat. L. 1201.*]

[Bonds for naval expenditures — character.] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as may be necessary to meet emergency expenditures directed by the President for naval construction or the expediting thereof as may be authorized by law, not exceeding \$150,000,000, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States in such form and subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury is hereby authorized to issue serial bonds of the United States maturing in equal amounts from date

of issue to twenty years from date of issue, bearing interest payable semi-annually at a rate not exceeding three per centum per annum: *Provided further*, That such bonds shall be issued at not less than par, shall bear interest not exceeding three per centum per annum, shall not have the circulation privilege attached, and that all citizens of the United States shall be given an equal opportunity to subscribe therefor, but no commission shall be allowed or paid thereon; both principal and interest shall be payable in United States gold coin of the present standard of value, and shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. In order to pay the necessary expenses connected with said issue of bonds a sum not exceeding one-tenth of one per centum of the amount of bonds herein authorized is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct. [39 Stat. L. 1201.]

An Act To authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes.

[Act of April 24, 1917, ch. —, — Stat. L.—.]

[SEC. 1.] [Bond issue for national security and defense — amount — form — sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate \$5 000,000,000, exclusive of the sums authorized by section four of this Act, and to issue therefor bonds of the United States.

The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum as the Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege.

The bonds herein authorized shall first be offered at not less than par as a popular loan, under such regulations prescribed by the Secretary of the Treasury as will give all citizens of the United States an equal opportunity to participate therein; and any portion of the bonds so offered and not subscribed for may be otherwise disposed of at not less than par by the Secretary of the Treasury; but no commissions shall be allowed or paid on any bonds issued under authority of this Act. [— Stat. L. —.]

SEC. 2. [Establishment of credits for foreign governments — foreign bonds — purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war by establishing credits in the United States for foreign governments, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to purchase, at par, from such foreign governments then engaged in war with the enemies of the United States, their obligations hereafter issued, bearing the same rate of interest and containing in their essentials the same terms and conditions as those of the United States issued under authority of this Act; to enter into such arrangements as may be necessary or desirable for establishing such credits and for purchasing such obligations of foreign governments and for the subsequent payment thereof before maturity, but such arrangements shall provide that if any of the bonds of the United States issued and used for the purchase of such foreign obligations shall thereafter be converted into other bonds of the United States bearing a higher rate of interest than three and one-half per centum per annum under the provisions of section five of this Act, then and in that event the obligations of such foreign governments held by the United States shall be, by such foreign governments, converted in like manner and extent into obligations bearing the same rate of interest as the bonds of the United States issued under the provisions of section five of this Act. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$3,000,000,000, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to purchase bonds from foreign governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —.]

SEC. 3. [Obligations of foreign governments — sale.] That the Secretary of the Treasury, under such terms and conditions as he may prescribe, is hereby authorized to receive on or before maturity payment for any obligations of such foreign governments purchased on behalf of the United States, and to sell at not less than the purchase price any of such obligations and to apply the proceeds thereof, and any payments made by foreign governments on account of their said obligations to the redemption or purchase at not more than par and accrued interest of any bonds of the United States issued under authority of this Act; and if such bonds are not available for this purpose the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to call or which may be purchased at not more than par and accrued interest. [— *Stat. L.* —.]

SEC. 4. [Issuance of bonds under former statute — borrowing on credit of United States.] That the Secretary of the Treasury, in his discretion, is hereby authorized to issue the bonds not already issued heretofore authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes"; section one hundred and twenty-four of the Act approved June

third, nineteen hundred and sixteen, entitled "An Act for making further and more effectual provision for the national defense, and for other purposes"; section thirteen of the Act of September seventh, nineteen hundred and sixteen, entitled "An Act to establish a United States shipping board for the purpose of encouraging, developing, and creating a naval auxiliary and a naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries, to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes"; section four hundred of the Act approved March third, nineteen hundred and seventeen, entitled "An act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes"; and the public resolution approved March fourth, nineteen hundred and seventeen, entitled "Joint resolution to expedite the delivery of materials, equipment, and munitions and to secure more expeditious construction of ships," in the manner and under the terms and conditions prescribed in section one of this Act.

That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, in addition to the sum authorized in section one of this Act, such additional amount, not exceeding \$63,945,460 as may be necessary to redeem the three per cent loan of nineteen hundred and eight to nineteen hundred and eighteen, maturing August first, nineteen hundred and eighteen, and to issue therefor bonds of the United States in the manner and under the terms and conditions prescribed in section one of this Act. [— *Stat. L.* —.]

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 4 Fed. Stat. Ann. (2d ed.) 417.

For the Act of June 3, 1916, ch. 134, § 124, mentioned in the text, see 9 Fed. Stat. Ann. (2d ed.) 1340; see also WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

For the Act of Sept. 7, 1916, ch. 451, § 13, mentioned in the text, see SHIPPING AND NAVIGATION, *post*.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

SEC. 5. [Rate of interest of bonds — higher rate when allowed.] That any series of bonds issued under authority of sections one and four of this Act may, under such terms and conditions as the Secretary of the Treasury may prescribe, be convertible into bonds bearing a higher rate of interest than the rate at which the same were issued if any subsequent series of bonds shall be issued at a higher rate of interest before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by a proclamation of the President of the United States. [— *Stat. L.* —.]

SEC. 6. [Certificates of indebtedness.] That in addition to the bonds authorized by sections one and four of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as, in his judgment, may be necessary,

and to issue therefor certificates of indebtedness at not less than par in such form and subject to such terms and conditions and at such rate of interest, not exceeding three and one-half per centum per annum, as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe. Certificates of indebtedness herein authorized shall not bear the circulation privilege, and the sum of such certificates outstanding shall at no time exceed in the aggregate \$2,000,000,000, and such certificates shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. [— *Stat. L.* —.]

SEC. 7. [Proceeds of bonds and certificates — where deposited.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit in such banks and trust companies as he may designate the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness authorized by this Act, or the bonds previously authorized as described in section four of this Act, and such deposits may bear such rate of interest and be subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section fifty-one hundred and fifty-three, Revised Statutes, and amendments thereto: *Provided further*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act and the amendments thereof with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. [— *Stat. L.* —.]

For R. S. sec. 5153, mentioned in the text, see 5 Fed. Stat. Ann. 109; 6 Fed. Stat. Ann. (2d ed.) 711.

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann. (2d ed.) 741.

SEC. 8. [Expenses arising under Act — how met — report.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, a sum not exceeding one-tenth of one per centum of the amount of bonds and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That, in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and seventeen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [— *Stat. L.* —.]

SEC. 9. [Title of Act.] That the short title of this Act shall be "First Liberty Bond Act." [— Stat. L. —.]

This was added as a new section to this Act by the Third Liberty Bond Act of April 4, 1918, ch. —, § 7.

An Act To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes.

[Act of Sept. 24, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Bond issue for national security and defense—amount—form—sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate \$20,000,000,000, and to issue therefor bonds of the United States, in addition to the \$2,000,000,000 bonds already issued or offered for subscription under authority of the Act approved April twenty-fourth, nineteen hundred and seventeen, entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes": *Provided*, That of this sum \$3,062,945,460 shall be in lieu of that amount of the unissued bonds authorized by sections one and four of the Act approved April twenty-fourth, nineteen hundred and seventeen, \$225,000,000 shall be in lieu of that amount of the unissued bonds authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, \$150,000,000 shall be in lieu of the unissued bonds authorized by the joint resolution approved March fourth, nineteen hundred and seventeen, and \$100,000,000 shall be in lieu of the unissued bonds authorized by section four hundred of the Act approved March third, nineteen hundred and seventeen.

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding four and one-quarter per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value.

The bonds herein authorized shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in advance of any date which he may set for the closing of subscriptions and may reject or reduce allotments upon

later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or larger allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by increasing the aggregate amount of the bond issue from \$7,538,945,460, which was originally authorized, to \$12,000,000,000, changing the interest rate from four per cent per annum to four and one-quarter per cent per annum, and adding the last sentence of the section relating to subscriptions from persons in the military or naval service, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 1.

As so amended it was again amended by striking out the figures "\$12,000,000,000" and inserting in lieu thereof the figures \$20,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 1.

The Act of April 24 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

SEC. 2. [Establishment of credits for foreign governments — foreign bond — purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to establish credits with the United States for any foreign governments then engaged in war with the enemies of the United States; and, to the extent of the credits so established from time to time, the Secretary of the Treasury is hereby authorized to purchase, at par, from such foreign governments respectively their several obligations hereafter issued, bearing such rate or rates of interest, maturing at such date or dates, not later than the bonds of the United States then last issued under the authority of this Act, or of such Act approved April twenty-fourth, nineteen hundred and seventeen, and containing such terms and conditions as the Secretary of the Treasury may from time to time determine, or to make advances to or for the account of any such foreign governments and to receive such obligations at par for the amount of any such advances; but the rate or rates of interest borne by any such obligations shall not be less than the highest rate borne by any bonds of the United States which, at the time of the acquisition thereof, shall have been issued under authority of said Act approved April twenty-fourth, nineteen hundred and seventeen, or of this Act, and any such obligations shall contain such provisions as the Secretary of the Treasury may from time to

time determine for the conversion of a proportionate part of such obligations into obligations bearing a higher rate of interest if bonds of the United States issued under authority of this Act shall be converted in other bonds of the United States bearing a higher rate of interest, but the rate of interest in such foreign obligations issued upon such conversion shall not be less than the highest rate of interest borne by such bonds of the United States; and the Secretary of the Treasury with the approval of the President, is hereby authorized to enter into such arrangements from time to time with any such foreign Governments as may be necessary or desirable for establishing such credits and for the payment of such obligations of foreign Governments before maturity. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$7,000,000,000, and in addition thereto the unexpended balance of the appropriations made by section two of said Act approved April twenty-fourth, nineteen hundred and seventeen, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to establish credits for foreign Governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by substituting in the last sentence the figures \$5,500,000,000 for the figures \$4,000,000,000, which originally appeared, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 2 and as so amended it was again amended by striking out the figures \$5,500,000,000 and inserting in lieu thereof the figures \$7,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 2.

The Act of April 24, 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

SEC. 3. [Obligations of foreign governments — conversion into obligations containing different terms — sale.] That the Secretary of the Treasury is hereby authorized, from time to time, to exercise in respect to any obligations of foreign governments acquired under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, any privilege of conversion into obligations bearing interest at a higher rate provided for in or pursuant to this Act or said Act approved April twenty-fourth, nineteen hundred and seventeen, and to convert any short-time obligations of foreign governments which may have been purchased under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, into long-time obligations of such foreign governments, respectively, maturing not later than the bonds of the United States then last issued under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, as the case may be, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, and, with the approval of the President, to sell any of such obligations (but not at

less than the purchase price with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of their said obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen; and if such bonds can not be so redeemed or purchased the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. [— *Stat. L.* —.]

The Act of April 24, 1917, ch. —, mentioned in this section, is given, *supra*, p. 675.

SEC. 4. [Convertible bonds — reissuance when authorized.] That in connection with the issue of any series of bonds under the authority of section one of this Act the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war savings certificates, and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall, under the authority of this or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under this Act shall be substantially the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be exercised. If the privilege of conversion so conferred under this Act shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again though again thereafter bonds be issued bearing interest at a higher rate or rates. That holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section one, or (b) upon

conversion of four per centum bonds issued under section one, or (c) upon conversion of three and one-half per centum bonds issued under said Act approved April twenty-fourth, nineteen hundred and seventeen, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of section seven shall extend to all such bonds.

If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation. [*— Stat. L. —, as amended by — Stat. L. —.*]

The last two paragraphs were added to this section by the Third Liberty Bond Act of April 4, 1918, ch. —, § 3.

The Act of April 24, 1917, ch. —, is given *supra*, p. 675.

SEC. 5. [Certificates of indebtedness.] That in addition to the bonds authorized by section one of this Act the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor certificates of indebtedness of the United States at not less than par in such form or forms and subject to such terms and conditions and at such rate or rates of interest as he may prescribe; and each certificate so issued shall be payable at such time not exceeding one year from the date of its issue, and may be redeemable before maturity upon such terms and conditions, and the interest accruing thereon shall be payable at such time or times as the Secretary of the Treasury may prescribe. The sum of such certificates outstanding hereunder and under section six of said Act approved April twenty-fourth, nineteen hundred and seventeen, shall not at any one time exceed in the aggregate \$8,000,000,000. [*— Stat. L. —, as amended by — Stat. L. —.*]

This section was amended to read as here given by the Third Liberty Loan Act of April 4, 1918, ch. —, § 4, the amendment consisting of inserting the figures \$8,000,000,000 in the last sentence in lieu of \$4,000,000,000 which originally appeared.

SEC. 6. [War-savings certificates.] That in addition to the bonds authorized by section one of this Act and the certificates of indebtedness authorized by section five of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which

interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-saving certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate \$2,000,000,000. The amount of war-savings certificates sold to any one person at any one time shall not exceed \$100, and it shall not be lawful for any one person at any one time to hold war-savings certificates to an aggregate amount exceeding \$1,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates. [— *Stat. L.* —.]

SEC. 7. [Circulation privilege — exemption from taxation.] That none of the bonds authorized by section one, nor of the certificates authorized by section five, or by section six, of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate \$5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section. [— *Stat. L.* —.]

SEC. 8. [Proceeds from sale of bonds, etc.— where deposited — foreign depositories.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and arising from the payment of income and excess profits taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. The Secretary of the Treasury is hereby authorized to designate depositories in

foreign countries with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits. [*Stat. L. — as amended by — Stat. L. —.*]

This section was amended to read as here given by the Third Liberty Bond Act of April 4, 1918, ch. —, § 5. As originally enacted it was as follows:

"SEC. 8. That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions, as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. The Secretary of the Treasury is hereby authorized to designate depositories in foreign countries, with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits."

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann., (2d ed.) 741.

SEC. 9. [Government employees — services in connection with sale of bonds — compensation.] That in connection with the operations of advertising, selling, and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States provided for in this Act, the Postmaster General, under such regulations as he may prescribe, shall require, at the request of the Secretary of the Treasury, the employees of the Post Office Department and of the Postal Service to perform such services as may be necessary, desirable, or practicable, without extra compensation. [*Stat. L. —.*]

SEC. 10. [Expenses incident to sale of bonds etc.— appropriation — reports.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, except under section twelve, a sum not exceeding one-fifth of one per centum of the amount of bonds and war-saving certificates and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and eighteen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [*Stat. L. —.*]

SEC. 11. [Issuance of bonds under earlier statute — interchange of bonds — certificates of indebtedness — exemption from taxation or duties — former Act amended.] That bonds shall not be issued under authority of sections one and four of said Act approved April twenty-fourth, nineteen hundred and seventeen, in addition to the \$2,000,000,000 thereof heretofore issued or offered for subscription, but bonds shall be issued from time to time upon the interchange of such bonds of different denominations and of coupon and registered bonds and upon the transfer of registered bonds, under such rules and regulations as the Secretary of the Treasury shall prescribe, and, if and to the extent that the privilege of conversion provided for in such bonds shall arise and shall be exercised, in accordance with such provision for such conversion. No bonds shall be issued under authority of the several sections of Acts and of the resolution mentioned in said section four of the Act approved April twenty-fourth, nineteen hundred and seventeen; but the proceeds of the bonds herein authorized may be used for purposes mentioned in said section four of the Act of April twenty-fourth, nineteen hundred and seventeen, and as set forth in the Acts therein enumerated.

That section two of an Act of Congress approved February fourth, nineteen hundred and ten, entitled "An Act prescribing certain provisions and conditions under which bonds and certificates of indebtedness of the United States may be issued, and for other purposes," is hereby amended to read as follows:

"**SEC. 2.** That any certificates of indebtedness hereafter issued shall be exempt from all taxes or duties of the United States (but, in the case of certificates issued after September first, nineteen hundred and seventeen, only if and to the extent provided in connection with the issue thereof), as well as from taxation in any form by or under State, municipal, or local authority; and that a sum not exceeding one-tenth of one per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same." [*Stat. L. —.*]

For the Act of Feb. 4, 1910, ch. 25, § 2, amended by this section, see 1912 Supp. Fed. Stat. Ann. 309; 8 Fed. Stat. Ann. (2d ed.) 418.

SEC. 12. [Auditing accounts during war — place of auditing — manner, etc.] That the Secretary of the Treasury is authorized during the war, whenever it shall appear that the public interests require that any of the accounts of the Military Establishment be audited at any place other than the seat of Government, to direct the Comptroller of the Treasury and the Auditor for the War Department to exercise, either in person or through assistants, the powers and perform the duties of their offices at any place or places away from the seat of Government in the manner that is or may be required by law at the seat of Government and in accordance with the provisions of this section.

(a) That when the Secretary of the Treasury shall exercise the authority herein referred to, the powers and duties of the said comptroller and auditor, under and pursuant to the provisions of the Act of July thirty-

first, eighteen hundred and ninety-four, and all other laws conferring jurisdiction upon those officers, shall be exercised and performed in the same manner as nearly as practicable and with the same effect away from the seat of Government as they are now exercised and performed and have effect at the seat of Government, and decisions authorized by law to be rendered by the comptroller at the request of disbursing officers may be rendered with the same effect by such assistants as may be authorized by him to perform that duty.

(b) That when pursuant to this section the said comptroller and auditor shall perform their duties at a place in a foreign country, the balances arising upon the settlement of accounts and claims of the Military Establishment shall be certified by the auditor to the Division of Bookkeeping and Warrants of the Treasury Department as now provided for the certification of balances by said auditor in Washington, and the balances so found due shall be final and conclusive upon all branches of the Government, except that any person whose account has been settled or the commanding officer of the Army abroad, or the comptroller may obtain a revision of such settlement by the comptroller upon application therefor within three months, the decision to be likewise final and conclusive and the differences arising upon such revision to be certified to and stated by the auditor as now provided by law: *Provided*, That certificates of balances due may be transmitted to and paid by the proper disbursing officer abroad instead of by warrant: *Provided further*, That any person whose account has been settled, or the Secretary of War, may obtain a reopening and review of any settlement made pursuant to this section upon application to the Comptroller of the Treasury in Washington within one year after the close of the war, and the action of the comptroller thereon shall be final and conclusive in the same manner as herein provided in the case of a balance found due by the auditor.

(c) That the comptroller and auditor shall preserve the accounts, and the vouchers and papers connected therewith, and the files of their offices in the foreign country and transmit them to Washington within six months after the close of the war and at such earlier time as may be directed by the Secretary of the Treasury as to any or all accounts, vouchers, papers, and files.

(d) That the Secretary of the Treasury is authorized to appoint an assistant comptroller and an assistant auditor and to fix their compensation, and to designate from among the persons to be employed hereunder one or more to act in the absence or disability of such assistant comptroller and assistant auditor. He shall also prescribe the number and maximum compensation to be paid to agents, accountants, clerks, translators, interpreters, and other persons who may be employed in the work under this section by the comptroller and auditor. The assistant comptroller and assistant auditor shall have full power to perform in a foreign country all the duties with reference to the settlement there of the accounts of the Military Establishment that the comptroller and auditor now have at the seat of Government and in foreign countries under the provisions of this section, and shall perform such duties in accordance with the instructions received from and rules and regulations made by the comptroller and auditor. Such persons as are residing in a foreign country when first employed hereunder

shall not be required to take an oath of office or be required to be employed pursuant to the laws, rules, and regulations relating to the classified civil service, nor shall they be reimbursed for subsistence expenses at their post of duty or for expenses in traveling to or from the United States.

(e) That it shall be the duty of all contracting, purchasing, and disbursing officers to allow any representative of the comptroller or auditor to examine all books, records, and papers in any way connected with the receipt, disbursement, or disposal of public money, and to render such accounts and at such times as may be required by the comptroller. No administrative examination by the War Department shall be required of accounts rendered and settled abroad, and the time within which these accounts shall be rendered by disbursing officers shall be prescribed by the comptroller, who shall have power to waive any delinquency as to time or form in the rendition of these accounts. All contracts connected with accounts to be settled by the auditor abroad shall be filed in his office there.

(f) That any person appointed or employed under the provisions of this section who at the time is in the service of the United States shall, upon termination of his services hereunder, be restored to the position held by him at the time of such employment. No provision of existing law shall be construed to prevent the payment of money appropriated for the salary of any Government officer or employee at the seat of Government who may be detailed to perform duty under this section outside the District of Columbia, and such details are hereby authorized.

(g) That for the payment of the expenses in carrying into effect this section, including traveling expenses, per diem of \$4 in lieu of subsistence for officers and employees absent from Washington, rent, cablegrams, and telegrams, printing, law books, books of reference, periodicals, stationery, office equipment and exchange thereof, supplies, and all other necessary expenses, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$300,000, of which not exceeding \$25,000 may be expended at Washington for the purposes of this section, but no officer or employee shall receive for duty in Washington any compensation other than his regular salary.

(h) That the Secretary of the Treasury may designate not more than two persons employed hereunder to act as special disbursing agents of the appropriation herein, to serve under the direction of the comptroller, and their accounts shall be rendered to and settled by the accounting officers of the Treasury in Washington. All persons employed under this section shall perform such additional duties as the Secretary of the Treasury may direct.

(i) That the comptroller and the auditor, and such persons as may be authorized in writing by either of them, may administer oaths to American citizens in respect to any matter within the jurisdiction of either of said officers and certify the official character, when known, of any foreign officer whose jurat or certificate may be necessary on any paper to be filed with them.

(j) That persons engaged in work abroad under the provisions of this section may purchase from Army stores for cash and at cost price for their own use such articles or stores as may be sold to officers and enlisted men.

(k) That the authority granted under this section shall terminate six months after the close of the war or at such earlier date as the Secretary of the Treasury may direct, and it shall be the duty of the comptroller and auditor to make such reports as the Secretary of the Treasury may require of the expenditures made and work done pursuant to this section, and such reports shall be transmitted to the Congress at such time as he may decide to be compatible with the public interest.

(1) No officers, employees, or agents appointed or employed under this section shall receive more salary or compensation than like officers, employees, or agents of the Government now receive. [— *Stat. L.* —.]

For the Act of July 31, 1894, ch. 174, mentioned in the text, see 7 Fed. Stat. Ann. 382; 9 Fed. Stat. Ann. (2d ed.) 834.

SEC. 13. [Date of termination of war.] That for the purposes of this Act the date of the termination of the war between the United States and the Imperial German Government shall be fixed by proclamation of the President of the United States. [— *Stat. L.* —.]

SEC. 14. [Bonds receivable in payment of estate and inheritance tax.] That any bonds of the United States bearing interest at a higher rate than four per centum per annum (whether issued under section one of this Act or upon conversion of bonds issued under this Act or under said Act approved April twenty-fourth, nineteen hundred and seventeen), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law upon such estate or the inheritance thereof. [— *Stat. L.* —.]

This section 14 and the following sections 15, 16 and 17 were added to this Act by the Third Liberty Bond Act of April 4, 1918, ch. —, § 6, entitled "An Act to amend an Act approved September twenty-fourth, nineteen hundred and seventeen, entitled 'An Act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign governments, and for other purposes.'"

Sections 1-5 of said amending Act amended sections 1, 2, 4, 5 and 8 of this Act, *supra*, p. 679 *et seq.* Section 7 amended the Act of April 24, 1917, ch. —, by adding thereto a new section 9 given *supra*, p. 679. Section 8 was as follows:

"SEC. 8. That the short title of this Act shall be 'Third Liberty Bond Act.'"

SEC. 15. [Purchase of bonds by government — report.] That the Secretary of the Treasury is authorized, from time to time, until the expiration of one year after the termination of the war, to purchase bonds issued under authority of this Act, including bonds issued upon conversion of bonds issued under this Act or said Act approved April twenty-fourth, nineteen hundred and seventeen, at such prices and upon such terms and conditions as he may prescribe. The par amount of bonds of any such series which may be purchased in the twelve months' period beginning on the date of issue shall not exceed one-twentieth of the par amount of bonds of such series originally issued, and in each twelve months' period thereafter, shall not exceed one-twentieth of the amount of the bonds of such

series outstanding at the beginning of such twelve months' period. The average cost of the bonds of any series purchased in any such twelve months' period shall not exceed par and accrued interest.

For the purposes of this section the Secretary of the Treasury shall set aside, out of any money in the Treasury not otherwise appropriated, a sum not exceeding one-twentieth of the amount of such bonds issued before April first, nineteen hundred and eighteen, and as and when any more such bonds are issued he shall set aside a sum not exceeding one-twentieth thereof. Whenever, by reason of purchases of bonds, as provided in this section, the amount so set aside falls below the sum which he deems necessary for the purposes of this section, the Secretary of the Treasury shall set aside such amount as he shall deem necessary, but not more than enough to bring the entire amount so set aside at such time up to one-twentieth of the amount of such bonds then outstanding. The amount so set aside by the Secretary of the Treasury is hereby appropriated for the purposes of this section, to be available until the expiration of one year after the termination of the war.

The Secretary of the Treasury shall make to Congress at the beginning of each regular session a report including a detailed statement of the operations under this section. [— *Stat. L.* —.]

See the note to the preceding section 14 of this Act.

SEC. 16. [Payment of principal and interest in foreign money.] That any of the bonds or certificates of indebtedness authorized by this Act may be issued by the Secretary of the Treasury payable, principal and interest, in any foreign money or foreign moneys, as expressed in such bonds or certificates, but not also in United States gold coin, and he may dispose of such bonds or certificates in such manner and at such prices, not less than par, as he may determine, without compliance with the provisions of the third paragraph of section one. In determining the amount of bonds and certificates issuable under this Act the dollar equivalent of the amount of any bonds or certificates payable in foreign money or foreign moneys shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in pursuance of the provisions of section twenty-five of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes." The Secretary of the Treasury may designate depositories in foreign countries, with which may be deposited as he may determine all or any part of the proceeds of any bonds or certificates authorized by this Act, payable in foreign money or foreign moneys. [— *Stat. L.* —.]

See the note to section 14 of this Act, *supra*, p. 689.

For the Act of Aug. 27, 1894, ch. 349, § 25, mentioned in the text, see 2 Fed. Stat. Ann. 143; 2 Fed. Stat. Ann. (2d ed.) 368.

SEC. 17. [Title of Act.] That the short title of this Act shall be "Second Liberty Bond Act." [— *Stat. L.* —.]

See the note to section 14 of this Act, *supra*, p. 689.

SEC. 3. [Bonds held by nonresident alien, foreign corporation, etc.—taxation.] That notwithstanding the provisions of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, or of the War Finance Corporation Act, bonds and certificates of indebtedness of the United States payable in any foreign money or foreign moneys, and bonds of the War Finance Corporation payable in any foreign money or foreign moneys exclusively or in the alternative, shall, if and to the extent expressed in such bonds at the time of their issue, with the approval of the Secretary of the Treasury, while beneficially owned by a nonresident alien individual, or by a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority. [— *Stat. L.* —.]

This section 3 and the following sections 4, 5, are from the Fourth Liberty Bond Act of July 9, 1918, ch. —, entitled "An Act To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes."

Sections 1 and 2 of this Act amended the Act of Sept. 24, 1917, ch. —, §§ 1, 2, *supra*, pp. 675, 676.

SEC. 4. [Banks, trust companies, etc., as fiscal agents for selling bonds, etc.] That any incorporated bank or trust company designated as a depository by the Secretary of the Treasury under the authority conferred by section eight of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, which gives security for such deposits as, and to amounts, by him prescribed, may, upon and subject to such terms and conditions as the Secretary of the Treasury may prescribe, act as a fiscal agent of the United States in connection with the operations of selling and delivering any bonds, certificates of indebtedness or war savings certificates of the United States. [— *Stat. L.* —.]

See the note to the preceding section 3 of this Act.

The Act of Sept. 24, 1917, ch. —, § 8, mentioned in the text, is given *supra*, p. 684.

SEC. 5. [Title of Act.] That the short title of this Act shall be "Fourth Liberty Bond Act." [— *Stat. L.* —.]

See the note to the preceding section 3 of this Act.

PUBLIC HEALTH

See HEALTH AND QUARANTINE.

PUBLIC LANDS

Act of June 9, 1916, ch. 137, 694.

Sec. 1. Certain Railroad Lands Revested in Government, 694.

2. Classification of Revested Lands, 695.

3. Effect of Classification — Mineral Lands — Disposition of Timber Thereon, 696.

4. Nonmineral Lands — Disposition of Timber, 696.

5. Agricultural Lands — Entry — Application of Homestead Laws, 697.

6. Purchasers of Timber — Liability for Commission — Compensation of Register and Receiver, 698.

7. Suits against Railroad — Recovery of Moneys Received on Account of Lands — Taxes, 698.

8. Title to Moneys on Deposit to Await Outcome of Suit — Subrogation, 699.

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Act of Sept. 5, 1916, ch. 437, 706.

Public Lands in Minnesota — Drainage — Patents to Purchasers — Time — Delay in Payments — Subrogation — Former Act Amended, 706.

Act of Sept. 5, 1916, ch. 440, 707.

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Act of Dec. 29, 1916, ch. 9, 708.

Sec. 1. Stock-Raising Homesteads — Entry — Unappropriated Unreserved Public Land, 708.

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Act of March 4, 1917, ch. 184, 713.

Sec. 1. Rights of Way — Grant for Irrigation or Drainage — Former Act Amended, 713.

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Act of Aug. 10, 1917, ch. —, 716.

Sec. 10. Enlarged Homesteads — Lands without Water for Domestic Uses — Residence — Cultivation — Former Act Amended, 716.

Act of Oct. 6, 1917, ch. —, 716.

Affidavits — Before Whom Taken — Persons in Military or Naval Service, 716.

Act of Dec. 20, 1917, ch. —, 717.

Homestead Settlers and Entrymen — Leave of Absence Pending War, 717.

Act of March 21, 1918, ch. —, 717.

Desert Land Entries — Final Proof — Extension of Time, 717.

Act of July 1, 1918, ch. —, 717.

Sec. 1. Local Land Offices — Registers and Receivers — Expenses, 717.

Hearings — Depositions — Fees, 718.

Act of July 3, 1918, ch. —, 718.

Sec. 1. Clerks from Office of Surveyor General — Detail — Traveling Expenses, 718.

CROSS-REFERENCES

Homesteads in Alaska, see ALASKA.

Declaration of Intention by Entryman, see NATURALIZATION.

See also MINERAL LANDS, MINES AND MINING; PUBLIC PARKS; WATERS.

An Act To alter and amend an Act entitled “An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon,” approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and to alter and amend an Act entitled “An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,” approved May fourth, eighteen hundred and seventy, and for other purposes.

[Act of June 9, 1916, ch. 137, 39 Stat. L. 218.]

[SEC. 1.] [Certain railroad lands revested in government.] That the title to so much of the lands granted by the Act of July twenty-fifth, eighteen hundred and sixty-six, entitled “An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,” as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, and to so much of the lands granted by the Act of May fourth, eighteen hundred and seventy, entitled “An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,” for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, as had not been sold by the Oregon and California Railroad Company prior to July first, nineteen hundred and thirteen, be, and the same is hereby, revested in the United States: *Provided*, That the provisions of this Act shall not apply to the right of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said

railroad company on December ninth, nineteen hundred and fifteen, for depots, sidetracks, wood yards, and standing grounds. [39 Stat. L. 218.]

Preceding the foregoing section was the following preamble:

"Whereas by the Acts of Congress approved April tenth, eighteen hundred and sixty-nine (Fourteenth Statutes at Large, page two hundred and thirty-nine), and May fourth, eighteen hundred and seventy (Sixteenth Statutes at Large, page ninety-four), it was provided that the lands granted to aid in the construction of certain railroads from Portland, in the State of Oregon, to the northern boundary of the State of California, and from Portland to Astoria and McMinnville, in the State of Oregon, should be sold to actual settlers only, in quantities not exceeding one hundred and sixty acres to each person and at prices not greater than \$2.50 per acre; and

"Whereas the Oregon and California Railroad Company, beneficiary of said acts, has violated the terms under which the said lands were granted by selling certain of said lands to persons other than actual settlers, by selling in quantities of more than one-quarter section to each person, by selling at prices in excess of \$2.50 per acre, and by refusing to sell any further portions of such lands to actual settlers at any price, and in so doing has willfully violated the terms of the statutes by which the said lands were granted; and

"Whereas in the suit instituted by the Attorney General of the United States, pursuant to the authority and direction contained in the joint resolution of April thirtieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page five hundred and seventy-one), the Supreme Court of the United States, in its decision rendered June twenty-first, nineteen hundred and fifteen (Two hundred and thirty-eighth United States, page three hundred and ninety-three), ordered that the Oregon and California Railroad Company be enjoined from making further sales of lands in violation of the law, and that the said railroad company be further enjoined from making any sales whatever of either the land or the timber thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands in accordance with such policy as Congress might deem fitting under the circumstances and at the same time secure to the railroad company all the value conferred by the granting Acts; and

"Whereas it was expressly provided by section twelve of the Act of July twenty-fifth, eighteen hundred and sixty-six (Fourteenth Statutes at Large, page two hundred and thirty-nine), that Congress might at any time, having due regard for the rights of the grantee railroad company, add to, alter, amend, or repeal the Act making the grant; and

"Whereas the Oregon and California Railroad Company and its predecessors in interest received a large sum of money from sales of said land for prices in excess of \$2.50 per acre, and from leases, interest on contracts, and so forth; and

"Whereas the aforesaid granting Acts conferred upon the said railroad company the right to receive not more than \$2.50 per acre for each acre of land so granted: Therefore," etc.

The Acts mentioned in the title of this Act and the first section thereof are the Act of July 25, 1866, ch. 242, 14 Stat. L. 239; the amendatory Act of June 25, 1868, ch. 80, 15 Stat. L. 80, the amendatory Act of April 10, 1869, ch. 27, 16 Stat. L. 47, and the Act of May 4, 1870, ch. 69, 16 Stat. L. 94.

The resolution mentioned in the preamble is the Res. of April 30, 1908, No. 18, 35 Stat. L. 571.

Name of Act.—This Act is known as the Chamberlain-Ferris Act. Oregon, etc., R. C. v. U. S., 243 U. S. 549, 61 U. S. (L. ed.) 890.

Constitutionality.—Vested rights of railway companies whose disregard of the covenants in certain congressional land grant Acts that the lands granted shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and at a price not exceeding \$2.50 an acre, had made the lands more inviting for speculation than for settlement, were not destroyed without due process of law by the enactment, in

the exercise of the reserved power to alter or repeal, of the provisions of this Act, which revert the title to the unsold lands in the United States, excepting rights of way and lands in actual use for depots, sidetracks, etc., and regulate the disposition of such lands and the distribution of the proceeds, securing to the railway companies \$2.50 an acre, less any off-sets properly chargeable against the railway companies on account of prior sales, the use of the timber, the evading of taxation, etc. Oregon, etc., R. Co. v. U. S., 243 U. S. 549, 61 U. S. (L. ed.) 890.

SEC. 2. [Classification of revested lands.] That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise,

is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character.

Class two. Timberlands, which shall include lands bearing a growth of timber not less than three hundred thousand feet board measure on each forty-acre subdivision.

Class three. Agricultural lands, which shall include all lands not falling within either of the two other classes:

Provided, That any of said lands, however classified, may be reclassified, if, because of a change of conditions or other reasons, such action is required to denote properly the true character and class of such lands: *Provided further*, That all the general laws of the United States now existing or hereafter enacted relating to the granting of rights of way over or permits for the use of public lands shall be applicable to all lands title to which is revested in the United States under the provisions of this Act. All lands disposed of under the provisions of this Act shall be subject to all rights of way which the Secretary of the Interior shall at any time deem necessary for the removal of the timber from any lands of class two. [39 Stat. L. 219.]

SEC. 3. [Effect of classification — mineral lands — disposition of timber thereon.] That the classification provided for by the preceding section shall not operate to exclude from exploration, entry, and disposition, under the mineral land laws of the United States, any of said lands, except power sites, which are chiefly valuable for the mineral deposits contained therein, and the general mineral laws are hereby extended to all of said lands, except power sites: *Provided*, That any person entering mineral lands of class two shall not acquire title to the timber thereon, which shall be sold as hereinafter provided in section four, but he shall have the right to use so much of the timber thereon as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States. [39 Stat. L. 219.]

SEC. 4. [Nonmineral lands — disposition of timber.] That nonmineral lands of class two shall not be disposed of until the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed, and thereupon said lands shall fall into class three and be disposed of in the manner hereinafter provided for the disposal of lands of that class.

The timber on lands of class two shall be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to citizens of the United States, associations of such citizens, and corporations organized under the laws of the United States, or any State, Territory, or District thereof, at such times, in such quantities, and under such plan of public competitive bidding as in the judgment of the Secretary

of the Interior may produce the best results: *Provided*, That said Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate, and may reoffer the timber until a satisfactory bid is received: *Provided further*, That upon application of a qualified purchaser that any legal subdivision shall be separately offered for sale such subdivision shall be separately offered before being included in any offer of a larger unit, if such application be filed within ninety days prior to such offer: *And provided further*, That said timber shall be sold as rapidly as reasonable prices can be secured therefor in a normal market.

The Secretary of the Interior shall as soon as the purchase price is fully paid by any person purchasing under the provisions of this section issue to such purchaser a patent conveying the timber and expressly reserving the land to the United States. The timber thus purchased may be cut and removed by the purchaser, his heirs or assigns, within such period as may be fixed by the Secretary of the Interior, which period shall be designated in the patent; all rights under said patent shall cease and terminate at the expiration of said period: *Provided*, That in the event the timber is removed prior to the expiration of said period the Secretary of the Interior shall make due announcement thereof, whereupon all rights under the patent shall cease.

No timber shall be removed until the issuance of patent therefor. All timber sold under this Act shall be subject to the taxing power of the States apart from the land as soon as patents are issued as provided for herein. [39 Stat. L. 219.]

SEC. 5. [Agricultural lands — entry — application of homestead laws.] That nonmineral lands of class three shall be subject to entry under the general provisions of the homestead laws of the United States, except as modified herein, and opened to entry in accordance with the provisions of the Act of September thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page one hundred and thirteen). Fifty cents per acre shall be paid at the time the original entry is allowed and \$2 per acre when final proof is made. The provisions of section twenty-three hundred and one, Revised Statutes, shall not apply to any entry hereunder and no patent shall issue until the entryman has resided upon and cultivated the land for a period of three years, proof of which shall be made at any time within five years from date of entry. The area cultivated shall be such as to satisfy the Secretary of the Interior that the entry is made in good faith for the purpose of settlement and not for speculation: *Provided*, That the payment of \$2.50 per acre shall not be required for homestead entrymen upon lands of class two when the same shall become subject to entry as agricultural lands in class three: *Provided further*, That during the period fixed for the submission of applications to make entry under this section any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the first day of December, nineteen hundred and thirteen, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the

quarter section upon which he was so residing whether such lands shall be of class two or class three and where such quarter section does not contain more than one million two hundred thousand feet board measure of timber, and where the quarter section contains more than the said quantity of timber such person may enter the forty-acre tract, or lot or lots containing approximately forty acres, upon which his improvements, or the greater part thereof, are situated: *Provided further*, That a prior exercise of the homestead right by any such person shall not be a bar to the exercise of such preference rights: *And provided further*, That all of the following described lands which may become revested in the United States by operation of this Act, to-wit: Township one south, range five east, sections twenty-three and thirty-five; township one south, range six east, sections three, five, seven, nine, seventeen, nineteen, twenty-nine, thirty-one, and thirty-three; township two south, range five east, sections one and three; township two south, range six east, sections one, three, five, seven, nine, and eleven; township two south, range seven east, section seven; township three south, range three east, section fifteen; township four south, range four east, sections eleven and thirteen; township four south, range five east, sections nineteen and twenty-nine; and township twelve south, range seven west, sections fifteen, twenty-one, twenty-three, twenty-seven, thirty-three, and thirty-five, Willamette meridian and base, State of Oregon, shall be withheld from entry or other disposition for a period of two years after the approval hereof. [39 Stat. L. 220.]

For the Act of Sept. 30, 1913, ch. 15, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 347; 8 Fed. Stat. Ann. (2d ed.) 663.

For R. S. sec. 2301, mentioned in the text, see 6 Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 583.

SEC. 6. [Purchasers of timber — liability for commission — compensation of register and receiver.] That persons who purchase timber on lands of class two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the register and receiver, within the maximum compensation allowed them by law; and the register and receiver shall receive no other compensation whatever for services rendered in connection with the sales of timber under the provisions of section four of this Act. [39 Stat. L. 221.]

SEC. 7. [Suits against railroad — recovery of moneys received on account of lands — taxes.] That the Attorney General of the United States be, and he is hereby, authorized and directed to institute and prosecute any and all suits in equity and actions at law against the Oregon and California Railroad Company, and any other proper party which he may deem appropriate, to have determined the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of said granted lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the "full value" secured to the grantees under said granting Acts as heretofore interpreted by the Supreme Court. In making this determination the court shall take into consideration and give due and proper legal effect to all receipts of money from sales of land or timber,

forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors. In making this determination in the aforementioned suit or suits the court shall also determine, on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this Act, and which should in law have been paid by the said Oregon and California Railroad Company, and the amount thus determined shall be treated as money received by said railroad company. [39 Stat. L. 221.]

SEC. 8. [Title to moneys on deposit to await outcome of suit — subrogation.] That the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit commenced by the United States in pursuance of said joint resolution of nineteen hundred and eight is hereby vested in the United States, and the United States is subrogated to all the rights and remedies of the obligee or obligees, and especially of Louis L. Sharp as commissioner, under any contract for the purchase of timber on the grant lands. [39 Stat. L. 221.]

SEC. 9. [Taxes — payment by government.] That the taxes accrued and now unpaid on the lands revested in the United States, whether situate in the State of Oregon or State of Washington, shall be paid by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the approval of this Act, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated. [39 Stat. L. 221.]

SEC. 10. [Moneys received for lands and timber — special fund — liens — payments from fund.] That all moneys received from or on account of said lands and timber under the provisions of this Act shall be deposited in the Treasury of the United States in a special fund, to be designated "The Oregon and California land-grant fund," which fund shall be disposed of in the following manner: The Secretary of the Interior shall ascertain as soon as may be the exact number of acres of said lands, sold or unsold, patented to the Oregon and California Railroad Company, or its predecessors, and the number of acres of unpatented lands which said railroad company is entitled to receive under the terms of said grants and the value of said lands at \$2.50 per acre. From the sum thus ascertained he shall deduct the amount already received by the said railroad company and its predecessors in interest on account of said lands and which should be charged against it as determined under section seven of this Act; and a sum equal to the balance thus resulting shall be paid, as herein provided, to the said railroad company, its successors or assigns, and to those having liens on the land, as their respective interests may appear. The amount due lien holders shall be evidenced either by the consent, in writing, of the railroad company or by a judgment of a court of competent jurisdiction in a suit to which the railroad company

and the lien holders are parties. Payments shall be made from time to time, as the fund accumulates, by the Treasurer of the United States upon the order of the Secretary of the Interior: *Provided, however,* That if, upon the expiration of ten years from the approval of this Act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor. After the said railroad company, its successors or assigns, and the lien holders shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section nine hereof, shall be deposited in the Treasury to the credit of the United States, thereafter all other moneys received from the sales of land and timber shall be distributed as follows:

A separate account shall be kept in the General Land Office of the sales of land and timber within each county in which any of said lands are situated, and, after deducting from the amount of the proceeds arising from such sales in each county a sum equal to that applied to pay the accrued taxes in that county and a sum equal to \$2.50 per acre for each acre of such land therein title to which is revested in the United States under this Act, twenty-five per centum of the remainder shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; forty per centum shall be paid into, reserved, and appropriated as a part of the fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act; ten per centum shall become a part of the general fund in the Treasury of the United States; and of the balance remaining in said Oregon and California land grant fund from whatsoever source derived twenty-five per centum shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; and the remainder shall become a part of the general fund in the Treasury of the United States. The payments herein authorized shall be made to the treasurers of the States and counties, respectively, by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the close of each fiscal year during which the moneys were received: *Provided,* That none of the payments to the States and counties and to the reclamation fund in this section provided for shall be made until the amount due the Oregon and California Railroad Company, its successors or assigns, has been fully paid, and the Treasury reimbursed for all taxes paid pursuant to the provisions of section nine of this Act. [39 Stat. L. 222.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in this section, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 11. [Authority of Secretary of Interior — rules and regulations — perjury.] That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect; and any person, applicant, purchaser, entryman, or witness who shall swear falsely in any affidavit or proceeding required hereunder or under the regulations issued by the Secretary of the Interior shall be guilty of perjury and liable to the penalties prescribed therefor. [39 Stat. L. 223.]

SEC. 12. [Appropriation to defray expense of classification.] That the sum of \$100,000 be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to complete the classification of the lands as herein provided, which amount shall be immediately available and shall remain available until such classification shall have been completed. [39 Stat. L. 223.]

An Act To amend the Act of June twenty-third, nineteen hundred and ten, entitled "An Act providing that entrymen for homesteads within the reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead Act."

[Act of May 8, 1916, ch. 114, 39 Stat. L. 65.]

[Homestead entries in reclamation projects — assignments — former Act amended.] That the Act of June twenty-third, nineteen hundred and ten (Public, Two hundred and forty-three, Thirty-sixth Statutes, page five hundred and ninety-two), entitled "An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead Act," is hereby amended by adding the following proviso:

"*Provided*, That in the absence of any intervening valid adverse interests any assignment made between June twenty-third, nineteen hundred and ten, and January first, nineteen hundred and thirteen, of land upon which the assignor has submitted satisfactory final proof and the assignee purchased with the belief that the assignment was valid and under the Act of June twenty-third, nineteen hundred and ten, is hereby confirmed, and the assignee shall be entitled to the land assigned as under the Act of June twenty-third, nineteen hundred and ten, notwithstanding that said original entry was conformed to farm units and that the part assigned was canceled and eliminated from said entry prior to the date of final proof: *Provided further*, That all entries so assigned shall be subject to the limitations, terms, and conditions of the reclamation Act and Acts amendatory thereof or supplemental thereto, and all of said assignees whose entries are hereby

confirmed shall, as a condition to receiving patent, make the proof heretofore required of assignees." [39 Stat. L. 65.]

For the Act of June 23, 1910, ch. 357, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 319; 9 Fed. Stat. Ann. (2d ed.) 1376.

[SEC. 1.] [Colorado—grant of land for educational purposes—change of use—Indians.] * * * That the lands, buildings, fixtures, and all property rights granted to the State of Colorado for educational purposes by section five of the Act of Congress approved April fourth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page two hundred and seventy-three), may, in lieu of the use designated in said grant, be utilized by said State for the care of the insane, as an agricultural experiment station, or for such other public purposes as may be authorized by the legislature of the State: *Provided*, That Indians shall always be admitted to such institutions free of charge and upon an equality with white persons. [39 Stat. L. 128.]

This is from the Indian Appropriation Act of May 18, 1916, ch. 125.

The Act mentioned in the text is the Indian Appropriation Act of April 4, 1910, ch. 140, § 5, 36 Stat. L. 273.

An Act Creating an additional land district in the State of California, and for other purposes.

[Act of June 15, 1916, ch. 147, 39 Stat. L. 226.]

[SEC. 1.] [Additional land district—California.] That an additional land district is hereby created for the State of California, to embrace the lands contained in the following-described boundaries: Beginning at the intersection of the range line between ranges five and six east of the San Bernardino meridian with the southern boundary of California; thence north along the range line, between ranges five and six east, to the northwest corner of township nine south, range six east; thence east along the second standard parallel south to the southwest corner of township eight south, range seven east; thence north along the range line, between ranges six and seven east, to the northwest corner of township two south, range seven east; thence east along the township line between townships one and two south to its intersection with the Colorado River; thence southerly along the Colorado River to its intersection with the south boundary of California; thence southwesterly along the southern boundary of California to its intersection with the range line between ranges five and six east, to the place of beginning; that the land district shall be known as the Imperial district, and the Secretary of the Interior shall be authorized to select the site of the land office. [39 Stat. L. 226.]

SEC. 2. [Transfer of records.] That the Secretary of the Interior shall cause all plats, maps, records, and papers in the Los Angeles land office which relate to or form a necessary part of the records of the lands

embraced in the district hereby created to be transferred to the Imperial land district. [39 Stat. L. 227.]

SEC. 3. [Register and receiver.] That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and receiver for said land district, and they shall be subject to the same laws and entitled to the same compensation as is or may be hereafter provided by law in relation to the existing land offices and officers in said State. [39 Stat. L. 227.]

An Act Authorizing leave of absence to homestead settlers upon unsurveyed lands.

[Act of July 3, 1916, ch. 214, 39 Stat. L. 341.]

[Homestead settlers—leave of absence—unsurveyed lands.] That any qualified person who has heretofore or shall hereafter in good faith make settlement upon and improve unsurveyed unreserved unappropriated public lands of the United States with intention, upon survey, of entering same under the homestead laws shall be entitled to a leave of absence in one or two periods not exceeding in the aggregate five months in each year after establishment of residence: *Provided*, That he shall have plainly marked on the ground the exterior boundaries of the lands claimed and have filed in the local land office notice of the approximate location of the lands settled upon and claimed, of the period of intended absence, and that he shall upon the termination of the absence and his return to the land file notice thereof in the local land office. [39 Stat. L. 341.]

An Act To amend an Act entitled "An Act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, by adding a new section to be known as section seven.

[Act of July 3, 1916, ch. 220, 39 Stat. L. 344.]

[Enlarged homesteads—additional entry—former Act amended.] That the Act entitled "An Act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, be amended by adding thereto an additional section to be known as section seven:

"SEC. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this Act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this Act as provided by section one thereof: *Provided further*, That in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in

conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes." [39 Stat. L. 344.]

For the Act of Feb. 19, 1909, ch. 160, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act Providing for the discovery, development, and protection of streams, springs, and water holes in the desert and arid public lands of the United States, for rendering the same more readily accessible, and for the establishment of and maintenance of signboards and monuments locating the same.

[Act of Aug. 21, 1916, ch. 360, 39 Stat. L. 518.]

[SEC. 1.] [Arid public lands — discovery, etc., of water — monuments and signboards.] That the Secretary of the Interior be, and he is hereby, authorized and empowered, in his discretion in so far as the authorization made herein will permit, to discover, develop, protect, and render more accessible for the benefit of the general public, springs, streams, and water holes on arid public lands of the United States; and in connection therewith to erect and maintain suitable and durable monuments and signboards at proper places and intervals along and near the accustomed lines of travel and over the general area of said desert lands, containing information and directions as to the location and nature of said springs, streams, and water holes, to the end that the same may be more readily traced and found by persons in search or need thereof; also to provide convenient and ready means, apparatus, and appliances by which water may be brought to the earth's surface at said water holes for the use of such persons; also to prepare and distribute suitable maps, reports, and general information relating to said springs, streams, and water holes, and their specific location with reference to lines of travel. [39 Stat. L. 518.]

SEC. 2. [Appropriation.] That to carry out the purposes of this Act the expenditure of \$10,000, or so much thereof as may be necessary, is hereby authorized. [39 Stat. L. 518.]

SEC. 3. [Wilful injury, etc., of monuments — impairment of water supply — penalty.] That whoever shall wilfully or maliciously injure, destroy, deface, or remove any of said monuments or signposts, or shall wilfully or maliciously fill up, render foul, or in anywise destroy or impair the utility of said springs, streams, or water holes, or shall wilfully or maliciously interfere with said monuments, signposts, streams, springs, or

water holes, or the purposes for which they are maintained and used, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. [39 Stat. L. 518.]

SEC. 4. [Rules and regulations.] That the Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this Act into full force and effect. [39 Stat. L. 518.]

An Act To open abandoned military reservations in the State of Nevada to homestead entry and desert-land entry, and to amend an Act entitled "An Act to open abandoned military reservations in the State of Nevada to homestead entry," approved October first, eighteen hundred and ninety.

[Act of Aug. 21, 1916, ch. 361, 39 Stat. L. 518.]

[Abandoned military reservations in Nevada — disposition under homestead, etc., laws.] That all the agricultural lands embraced within the military reservations in the State of Nevada which have been placed under the control of the Secretary of the Interior for disposition be disposed of under the homestead and desert-land laws, and not otherwise: *Provided*, That this Act is intended to make applicable to the desert-land laws only such lands as were included under the Act of March third, eighteen hundred and seventy-seven, providing for the disposition of public lands under the desert-land laws. [39 Stat. L. 516.]

For the Act of Oct. 1, 1890, ch. 1239, mentioned in the title of this Act, see 6 Fed. Stat. Ann. 427; 8 Fed. Stat. Ann. (2d ed.) 833.

For the Act of March 3, 1877, ch. 107, mentioned in the text of this Act, see 6 Fed. Stat. Ann. 392; 8 Fed. Stat. Ann. (2d ed.) 692.

Joint Resolution Extending the provisions of the Act approved June sixteenth, eighteen hundred and ninety-eight.

[Res. of Aug. 29, 1916, ch. 420, 39 Stat. L. 671.]

[Homestead settlers — service in army, etc. — effect on residence.] That the provisions of the Act approved June sixteenth, eighteen hundred and ninety-eight, chapter four hundred and fifty-eight (Thirtieth Statutes at Large, page four hundred and seventy-three); shall be applicable in all cases of military service rendered in connection with operations in Mexico, or along the borders thereof, or in mobilization camps elsewhere, whether such service be in the military or naval organization of the United States or the National Guard of the several States now or hereafter in the service of the United States. [39 Stat. L. 671.]

For the Act of June 16, 1898, ch. 458, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 608.

An Act To amend sections five and six of an Act entitled "An Act to authorize the drainage of certain lands in the State of Minnesota," approved May twentieth, nineteen hundred and eight.

[Act of Sept. 5, 1916, ch. 437, 39 Stat. L. 722.]

[Public lands in Minnesota — drainage — patents to purchasers — time — delay in payments — subrogation — former Act amended.] That section five of the Act entitled "An Act to authorize the drainage of certain lands in the State of Minnesota," approved May twentieth, nineteen hundred and eight, be, and the same is hereby, amended so as to read as follows:

"SEC. 5. That at any time after any sale of unentered lands has been made in the manner and for the purposes mentioned in this Act patent shall issue to the purchaser thereof upon payment to the receiver of the minimum price of \$1.25 per acre, or such other price as may have been fixed by law for such lands, together with the usual fees and commissions charged in entry of like lands under the homestead laws. But purchasers at a sale of unentered lands shall have the qualification of homestead entrymen, and not more than one hundred and sixty acres of such lands shall be sold to any one purchaser under the provisions of this Act. This limitation shall not apply to sales to the State, but shall apply to purchases from the State of unentered land bid in for the State. Any part of the purchase money arising from the sale of any lands in the manner and for the purposes provided in this Act which shall be in excess of the drainage charges then delinquent shall be paid to and used by the county in which such land is located for the purpose of maintenance, improving, and extending such drainage works within the area benefited by the drainage project in which such land shall have been assessed for such drainage charge."

That section six of said Act be, and the same is hereby, amended so as to read as follows:

"SEC. 6. That any entered lands sold in the manner and for the purposes mentioned in this Act may be patented to the purchaser thereof at any time after the expiration of the period of redemption provided for in the drainage laws under which it may be sold (there having been no redemption) upon the payment to the receiver of the fees and commissions and the price mentioned in the preceding section, or so much thereof as has not already been paid by the entryman; and if the sum received at any such sale shall be in excess of the payments herein required and of the drainage assessments and costs of the sale, such excess shall be paid to the proper county officer for the benefit of and payment to the entryman. That unless the purchasers of unentered lands shall, within ninety days after the sale provided for in section three, pay to the proper receiver the fees, commissions, and purchase price to which the United States may be entitled, as provided in section five, and unless the purchasers of entered lands shall, within ninety days after the right of redemption has expired, make like payments, as provided for in this section, any person having the qualifications of a homestead entryman may pay to the proper receiver for not more than one hundred and sixty acres of land for which such payment has not been made: First, the unpaid fees, commissions, and purchase price to which the United States may then be entitled; and second, the sum due at the sale

for drainage charges; and, in addition thereto, if bid in by the State, interest on the amount bid by the State at the rate of seven per centum per annum from the date of such sale, and thereupon the person making such payment shall become subrogated to the right of such purchaser to receive a patent for said land. When any payment is made to effect such subrogation the receiver shall transmit to the treasurer of the county where the land is situated the amount paid for drainage charges, together with the interest paid thereon." [39 Stat. L. 722.]

For the Act of May 20, 1908, ch. 181, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 551; 8 Fed. Stat. Ann. (2d ed.) 729.

An Act To amend an Act entitled "An Act to provide for an enlarged homestead," approved June seventeenth nineteen hundred and ten.

[Act of Sept. 5, 1916, ch. 440, 39 Stat. L. 724.]

[**Enlarged homesteads in Idaho — former Act amended.**] That the Act entitled "An Act to provide for an enlarged homestead," approved June seventeenth, nineteen hundred and ten, be amended by adding thereto an additional section to be known as section seven:

"SEC. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this Act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this Act or the Act of February nineteenth, nineteen hundred and nine (Thirty-fifth Statutes, page six hundred and thirty-nine), as provided by sections one of said Acts: *Provided further*, That in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes." [39 Stat. L. 724.]

For the Act of June 17, 1910, ch. 298, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 616.

For the Act of Feb. 19, 1909, ch. 160, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act To provide for stock-raising homesteads, and for other purposes.

[*Act of Dec. 29, 1916, ch. 9, 39 Stat. L. 862.*]

[SEC. 1.] [**Stock-raising homesteads — entry — unappropriated unreserved public land.**] That from and after the passage of this Act it shall be lawful for any person qualified to make entry under the homestead laws of the United States to make a stock-raising homestead entry for not exceeding six hundred and forty acres of unappropriated unreserved public land in reasonably compact form: *Provided, however,* That the land so entered shall theretofore have been designated by the Secretary of the Interior as “stock-raising lands.” [*39 Stat. L. 862.*]

SEC. 2. [**Designation of stock-raising lands — application — disposition.**] That the Secretary of the Interior is hereby authorized, on application or otherwise, to designate as stock-raising lands subject to entry under this Act lands the surface of which is, in his opinion, chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required for the support of a family: *Provided,* That where any person qualified to make original or additional entry under the provisions of this Act shall make application to enter any unappropriated public land which has not been designated as subject to entry (provided said application is accompanied and supported by properly corroborated affidavit of the applicant, in duplicate, showing prima facie that the land applied for is of the character contemplated by this Act), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the said land shall be designated under this Act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal; but no right to occupy such lands shall be acquired by reason of said application until said lands have been designated as stock-raising lands. [*39 Stat. L. 862.*]

SEC. 3. [**Entry — who may make — amount of land — location — additional entry — improvements.**] That any qualified homestead entryman may make entry under the homestead laws of lands so designated by the Secretary of the Interior, according to legal subdivisions, in areas not exceeding six hundred and forty acres, and in compact form so far as may be subject to the provisions of this Act, and secure title thereto by compliance with the terms of the homestead laws: *Provided,* That a former homestead entry of land of the character described in section two hereof shall not be a bar to the entry of a tract within a radius of twenty miles from such former entry under the provisions of this Act, subject to the requirements of law as to residence and improvements, which, together with the former entry, shall not exceed six hundred and forty acres: *Provided further,* That the entryman shall be required to enter all contiguous areas of the character herein described open to entry prior to the entry of

any noncontiguous land: *Provided further*, That instead of cultivation as required by the homestead laws the entryman shall be required to make permanent improvements upon the land entered before final proof is submitted tending to increase the value of the same for stock-raising purposes, of the value of not less than \$1.25 per acre, and at least one-half of such improvements shall be placed upon the land within three years after the date of entry thereof. [39 Stat. L. 863.]

SEC. 4. [Additional entry — contiguous land — amount of land — residence — improvements.] That any homestead entryman of lands of the character herein described, who has not submitted final proof upon his existing entry shall have the right to enter, subject to the provisions of this Act, such amount of contiguous lands designated for entry under the provisions of this Act as shall not, together with the amount embraced in his original entry, exceed six hundred and forty acres, and residence upon the original entry shall be credited on both entries, but improvements must be made on the additional entry equal to \$1.25 for each acre thereof. [39 Stat. L. 863.]

SEC. 5. [Additional entry — contiguous land — amount of land — proof.] That persons who have submitted final proof upon, or received patent for, lands of the character herein described under the homestead laws, and who own and reside upon the land so acquired, may, subject to the provisions of this Act, make additional entry for and obtain patent to contiguous lands designated for entry under the provisions of this Act, which, together with the area theretofore acquired under the homestead law, shall not exceed six hundred and forty acres, on proof of the expenditure required by this Act on account of permanent improvements upon the additional entry. [39 Stat. L. 863.]

SEC. 6. [Original entry — relinquishment of lands under — new entry in lieu.] That any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, who has entered or acquired under the homestead laws, prior to the passage of this Act, lands of the character described in this Act, the area of which is less than six hundred and forty acres, and who is unable to exercise the right of additional entry herein conferred because no lands subject to entry under this Act adjoin the tract so entered or acquired or lie within the twenty mile limit provided for in this Act, may, upon submitting proof that he resides upon and has not sold the land so entered or acquired and against which land there are no encumbrances, relinquish or reconvey to the United States the land so occupied, entered, or acquired, and in lieu thereof, within the same land-office district, may enter and acquire title to six hundred and forty acres of the land subject to entry under this Act, but must show compliance with all the provisions of this Act respecting the new entry and with all the provisions of existing homestead laws except as modified herein. [39 Stat. L. 863.]

SEC. 7. [Homestead laws — commutation provisions.] That the commutation provisions of the homestead laws shall not apply to any entries made under this Act. [39 Stat. L. 864.]

SEC. 8. [Additional entry — right when exercised — conflicting claims — equitable division.] That any homestead entryman or patentees who shall be entitled to additional entry under this Act shall have, for ninety days after the designation of lands subject to entry under the provisions of this Act and contiguous to those entered or owned and occupied by him, the preferential right to make additional entry as provided in this Act: *Provided*, That where such lands contiguous to the lands of two or more entrymen or patentees entitled to additional entries under this section are not sufficient in area to enable such entrymen to secure by additional entry the maximum amounts to which they are entitled, the Secretary of the Interior is authorized to make an equitable division of the lands among the several entrymen or patentees, applying to exercise preferential rights, such division to be in tracts of not less than forty acres, or other legal subdivision, and so made as to equalize as nearly as possible the area which such entrymen and patentees will acquire by adding the tracts embraced in additional entries to the lands originally held or owned by them: *Provided further*, That where but one such tract of vacant land may adjoin the lands of two or more entrymen or patentees entitled to exercise preferential right hereunder, the tract in question may be entered by the person who first submits to the local land office his application to exercise said preferential right. [39 Stat. L. 864.]

SEC. 9. [Coal and other mineral deposits — reservation — mining — damages.] That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action

brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office: *Provided*, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this Act. [39 Stat. L. 864.]

SEC. 10. [Water-holes — reservation — access.] That lands containing water-holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved under the provisions of the Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the Secretary may, in his discretion, also withdraw from entry lands necessary to insure access by the public to watering places reserved hereunder and needed for use in the movement of stock to summer and winter ranges or to shipping points, and may prescribe such rules and regulations as may be necessary for the proper administration and use of such lands: *Provided further*, That such driveways shall not be of greater number or width than shall be clearly necessary for the purpose proposed and in no event shall be more than one mile in width for a driveway less than twenty miles in length, not more than two miles in width for driveways over twenty and not more than thirty-five miles in length and not over five miles in width for driveways over thirty-five miles in length: *Provided further*, That all stock so transported over such driveways shall be moved an average of not less than three miles per day for sheep and goats and an average of not less than six miles per day for cattle and horses. [39 Stat. L. 865.]

For the Act of June 25, 1910, ch. 421, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 321; 8 Fed. Stat. Ann. (2d ed.) 657.

SEC. 11. [Rules and regulations — authorization.] That the Secretary of the Interior is hereby authorized to make all necessary rules and regulations in harmony with the provisions and purposes of this Act for the purpose of carrying the same into effect. [39 Stat. L. 865.]

An Act To allow additional entries under the enlarged homestead Act.

[Act of Feb. 20, 1917, ch. 98, 39 Stat. L. 925.]

[Enlarged homestead — additional entries.] That any person otherwise qualified who has obtained title under the homestead laws to less than one-quarter section of land may make entry and obtain title under the provisions of the Act entitled "An Act to provide for enlarged homesteads,"

approved February nineteenth, nineteen hundred and nine, and an Act of June seventeenth, nineteen hundred and ten, entitled "An Act to provide for an enlarged homestead," for such an area of public land as will, when one-half of such area is added to the area of the lands to which he has already obtained title, not exceed one-quarter section: *Provided*, That this Act shall not be construed to apply to soldiers' additional homestead entries made under section twenty-three hundred and six, United States Revised Statutes, or Acts amendatory thereof or supplemental thereto. [39 Stat. L. 925.]

For the Act of Feb. 19, 1909, ch. 160, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For the Act of June 17, 1910, ch. 298, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 616.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act To restore homestead rights in certain cases.

[Act of Feb. 20, 1917, ch. 101, 39 Stat. L. 926.]

[Homestead — restoration of rights.] That from and after the passage of this Act any person who has heretofore entered under the homestead laws, and paid a price equivalent to or greater than \$4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made: *Provided*, That the provisions of this Act shall not apply to any person who has failed to pay the full price for his former entry, or whose former entry was canceled for fraud. [39 Stat. L. 926.]

An Act To punish persons who make false representations to settlers and others pertaining to the public lands of the United States.

[Act of Feb. 23, 1917, ch. 115, 39 Stat. L. 936.]

[False representations made to settlers and others — punishment.] That any person who, for a reward paid or promised to him in that behalf, shall undertake to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who shall willfully and falsely represent to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, shall falsely represent to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be

deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding \$300 or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. [39 Stat. L. 936.]

An Act Relating to desert-land entries.

[Act of Feb. 27, 1917, ch. 134, 39 Stat. L. 946.]

[Enlarged homestead entry — desert-land entry.] That the right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: *Provided*, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this Act does not exceed four hundred and eighty acres. [39 Stat. L. 946.]

An Act To amend the irrigation Act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, page one thousand and ninety-five), section eighteen, and to amend section two of the Act of May eleventh, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and four).

[Act of March 4, 1917, ch. 184, 39 Stat. L. 1197.]

[SEC. 1.] [Rights of way — grant for irrigation or drainage — former Act amended.] That section eighteen of what is generally known as the irrigation Act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, page one thousand and ninety-five), be, and is hereby, amended so as to read as follows:

“SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company or drainage district formed for the purpose of irrigation or drainage and duly organized under the laws of any State or Territory, and which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.” [39 Stat. L. 1197.]

For the Act of March 3, 1891, ch. 561, § 18, amended by this section, see 6 Fed. Stat. Ann. 508; 8 Fed. Stat. Ann. (2d ed.) 803.

SEC. 2. [Rights of way for ditches, etc.—use for what purposes — former Act amended.] That section two of the Act of May eleventh, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and four), be, and is hereby, amended so as to read as follows:

“**SEC. 2.** That rights of way for ditches, canals, or reservoirs, heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the Act entitled ‘An Act to repeal timber-culture laws, and for other purposes,’ approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation or drainage.” [39 Stat. L. 1197.]

For the Act of May 11, 1893, ch. 292, § 2, amended by this section, see 6 Fed. Stat. Ann. 512; 8 Fed. Stat. Ann. (2d ed.) 810.

For the Act of March 3, 1891, ch. 561, §§ 18, 19, 20, mentioned in this section, see 6 Fed. Stat. Ann. 508-510; 8 Fed. Stat. Ann. (2d ed.) 803 *et seq.*

An Act For the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war.

[Act of July 28, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Homesteads — settlers or entrymen — military or naval service — effect.] That any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person who has made application for public lands which thereafter may be allowed under the homestead laws, who, after such settlement, entry, or application, enlists or is actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, shall, in the administration of the homestead laws, have his services therein construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, entryman, or person unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases hereinafter initiated that the alleged absence from the land was not due to his employment in such military or naval service; that if he shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence, without reference to the time of actual service: *Provided*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year. [— Stat. L. —.]

SEC. 2. [Death of settler or entryman in service.] That any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person who has made application for public lands

which thereafter may be allowed under the homestead laws, who dies while actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, then his widow, if unmarried, or in case of her death or marriage, his minor orphan children; or his or their legal representatives, may proceed forthwith to make final proof upon such entry or application thereafter allowed, and shall be entitled to receive Government patent for such land; and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead. [— *Stat. L.* —.]

An Act For the protection of desert-land entrymen who enter the military or naval service of the United States in time of war.

[*Act of Aug. 7, 1917, ch. —, — Stat. L. —.*]

[**Desert-land entrymen — military or naval service — effect.**] That no desert-land entry made or held under the provisions of the Act of March third, eighteen hundred and seventy-seven, as amended by the Act of March third, eighteen hundred and ninety-one, by an officer or enlisted man in the Army, Navy, Marine Corps, or Organized Militia of the United States shall be subject to contest or cancellation for failure to make or expend the sum of \$1 per acre per year in improvements upon such claim, or to effect the reclamation thereof, during the period said entryman or his successor in interest is engaged in the military service of the United States during the present war with Germany, and until six months thereafter, and the time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be, exclusive of the time of his actual service in the Army, Navy, Marine Corps, or Organized Militia of the United States: *Provided*, That said desert-land entry shall have been made by the said officer or enlisted man prior to his enlistment: *Provided further*, That each such entryman or claimant shall, within six months after the passage of this Act, or within six months after he is mustered into the service, file in the local land office of the district wherein his claim is situate a notice of his muster into the service of the United States and of his desire to hold said desert claim under this Act: *Provided further*, That the term "enlisted man," as used in this section shall include any person selected to serve in the military forces of the United States as provided by the Act entitled "An Act authorizing the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen. [— *Stat. L.* —.]

For the Act of March 3, 1877, ch. 107, as amended by the Act of March 3, 1891, ch. 561, mentioned in the text, see 6 Fed. Stat. Ann. 392; 8 Fed. Stat. Ann. (2d ed.) 692.

The Act of May 18, 1917, ch. —, also mentioned in the text, is given in WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 10. [Enlarged homesteads — lands without water for domestic uses — residence — cultivation — former Act amended.] That section six of the Act of Congress approved June seventeenth, nineteen hundred and ten, "An Act to provide for an enlarged homestead," be, and the same is hereby, amended to read as follows:

" SEC. 6. That whenever the Secretary of the Interior shall find any tracts of land in the State of Idaho, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible he may, in his discretion, designate such tracts of land, not to exceed in the aggregate one million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: *Provided*, That the entryman shall in good faith cultivate not less than one-sixteenth of the entire area of the entry which is susceptible of cultivation during the first year of the entry, not less than one-eighth during the second year, and not less than one-fourth during the third year of the entry and until final proof: *Provided further*, That after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho." [— *Stat. L.* —.]

The foregoing section 10 is a part of an Act of Aug. 10, 1917, ch. —, entitled "An Act To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products." Section 12 of this Act, given in AGRICULTURE, *ante*, p. 46, contains provisions relating to the expiration of the entire Act and should be read in connection with this section.

For the Act of June 17, 1910, ch. 298, § 6, amended by this section, see 1912 Supp. Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 619.

An Act Providing for an amendment to section twenty-two hundred and ninety-three of the Revised Statutes, allowing homestead and other public land affidavits to be taken before the military commander of any person engaged in military or naval service of the United States.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[Affidavits — before whom taken — persons in military or naval service.] That during the continuance of the present war with Germany, and until his discharge from service, any man serving in the armed forces of the United States, who, prior to the beginning of his services was a settler, an applicant, or entryman under the land laws of the United States, or who has, prior to enlistment, filed a contest, with the view of exercising preference right of entry therefor, may make any affidavit required by law or regulation of the department, affecting such application, entry, or contest, or necessary to the making of entry in the case of the successful termination of such contest awarding him preference right of entry, before his commanding officer as provided in section twenty-two hundred and ninety-three of the Revised Statutes of the United States, which affidavits shall be as binding in law and with like penalties as if taken before the Register of the United States Land Office. [— *Stat. L.* —.]

For R. S. sec. 2293, mentioned in the text, see 6 Fed. Stat. Ann. 304; 8 Fed. Stat. Ann. (2d ed.) 572.

An Act To authorize absence by homestead settlers and entrymen, and for other purposes.

[*Act of Dec. 20, 1917, ch. —, Stat. L. —.*]

[Homestead settlers and entrymen — leave of absence pending war.]

That during the pendency of the existing war any homestead settler or entryman shall be entitled to a leave of absence from his land for the purpose of performing farm labor, and such absence, while actually engaged in farm labor, shall, upon compliance with the terms of this Act, be counted as constructive residence: *Provided*, That each settler or entryman within fifteen days after leaving his claim for the purpose herein provided shall file notice thereof in the United States Land Office, and at the expiration of the calendar year file in said land office of the district wherein his claim is situated a written statement, under oath and corroborated by two witnesses, giving the date or dates when he left his claim, date or dates of return thereto, and where and for whom he was engaged in farm labor during such period or periods of absence: *Provided further*, That nothing herein shall excuse any homestead settler or entryman from making improvements or performing the cultivation required by applicable law upon his claim or entry: *Provided further*, That the provisions of this Act shall apply only to homestead settlers and entrymen who may have filed their application prior to the passage of this Act. The Secretary of the Interior is authorized to provide rules and regulations for carrying this Act into effect. [*— Stat. L. —.*]

An Act To amend an Act entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen and for prior years, and for other purposes."

[*Act of March 21, 1918, ch. —, — Stat. L. —.*]

[Desert land entries — final proof — extension of time.] That the provisions of the last three paragraphs of section five of the Act of March fourth, nineteen hundred and fifteen, "An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen, and for prior years, and for other purposes," be, and the same are hereby, extended and made applicable to any lawful pending desert-land entry made prior to March fourth, nineteen hundred and fifteen: *Provided*, That in cases where such entries have been assigned prior to the date of the Act the assignees shall, if otherwise qualified, be entitled to the benefit hereof. [*— Stat. L. —.*]

For the Act of March 4, 1915, ch. 147, § 5, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 201; 8 Fed. Stat. Ann. (2d ed.) 201.

[Sec. 1.] [Local land offices — registers and receivers — expenses.]

* * * That no expenses chargeable to the Government shall be incurred

by registers and receivers in the conduct of local land offices except upon previous specific authorization by the Commissioner of the General Land Office. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

Provisions identical with those of these paragraphs were contained in the like Appropriation Act of July 1, 1916, ch. 209, 39 Stat. L. 299, and June 12, 1907, ch. —, § 1, — Stat. L. —.

[Hearings — depositions — fees.] * * * For hearings or other proceedings held by order of the Commissioner of the General Land Office to determine the character of lands; whether alleged fraudulent entries are of that character or have been made in compliance with law; and of hearings in disbarment proceedings, \$35,000: *Provided*, That where depositions are taken for use in such hearings the fees of the officer taking them shall be 20 cents per folio for taking and certifying same and 10 cents per folio for each copy furnished to a party on request. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[SEC. 1.] [Clerks from office of surveyor general — detail — traveling expenses.] * * * The Secretary of the Interior is authorized to detail temporarily clerks from the office of one surveyor general to another as the necessities of the service may require and to pay their actual necessary traveling expenses in going to and returning from such office out of the appropriation for surveying the public lands. A detailed statement of traveling expenses incurred hereunder shall be made to Congress at the beginning of each regular session thereof. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —. Identical provisions have appeared in like appropriation Acts for preceding years.

PUBLIC MONEYS

Act of March 21, 1916, ch. 52, 718.

Lost, Stolen or Destroyed Checks — Duplicates — R. S. Sec. 3646 Amended, 718.

An Act To amend section thirty-six hundred and forty-six of the Revised Statutes of the United States as reenacted and amended by Act of February twenty-third, nineteen hundred and nine.

[Act of March 21, 1916, ch. 52, 39 Stat. L. 37.]

[Lost, stolen or destroyed checks — duplicates — R. S. sec. 3646 amended.] That section thirty-six hundred and forty-six of the Revised Statutes be, and hereby is, amended to read as follows:

"Sec. 3646. That whenever any original check is lost, stolen, or destroyed disbursing officers and agents of the United States are authorized,

within three years from the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of original check, as the Secretary of the Treasury shall prescribe: *Provided*, That whenever any original check or warrant of the Post Office Department has been lost, stolen, or destroyed the Postmaster General may authorize the issuance of a duplicate thereof, at any time within three years from the date of such original check or warrant, upon the execution by the owner thereof of such bond of indemnity as the Postmaster General may prescribe: *Provided further*, That when such original check or warrant does not exceed in amount the sum of \$50 and the payee or owner is, at the date of the application, an officer or employee in the service of the Post Office Department, whether by contract, designation, or appointment, the Postmaster General may, in lieu of an indemnity bond, authorize the issuance of a duplicate check or warrant upon such an affidavit as he may describe, to be made before any postmaster by the payee or owner of an original check or warrant." [39 Stat. L. 37.]

For R. S. sec. 3646, amended by this Act, as originally enacted, see 6 Fed. Stat. Ann. 563.

For R. S. sec. 3646, amended by this Act, as previously amended by the Act of Feb. 23, 1909, ch. 174, see 1909 Supp. Fed. Stat. Ann. 566; 8 Fed. Stat. Ann. (2d ed.) 902.

PUBLIC OFFICERS AND EMPLOYEES

Act of May 10, 1916, ch. 117, 719.

Sec. 6. Double Salaries Restricted — Exceptions, 719.

Act of March 3, 1917, ch. 163, 720.

Sec. 1. Salaries — Source — Supplementing by Individuals, etc., as Misdemeanor, 720.

Act of Oct. 6, 1917, ch. —, 720.

Sec. 8. Employees — Increased Compensation, 720.

9. Persons Receiving More Than One Salary — Additional Compensation, 721.

Act of July 3, 1918, ch. —, 721.

Sec. 6. Civilian Employees of United States and District of Columbia — Increase of Salary — Conditions — Exceptions — Appropriations, 721.

CROSS-REFERENCES

See *FALSE PERSONATION; PENAL LAWS.*

SEC. 6. [Double salaries restricted — exceptions.] That unless otherwise specially authorized by law, no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, but this shall not apply to retired officers or enlisted men of the Army, Navy, Marine Corps, or Coast Guard, or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia: *Provided*, That no such retired officer, officer, or enlisted man shall be denied or deprived of any of

his pay, salary, or compensation as such, or of any other salary or compensation for services heretofore rendered, by reason of any decision or construction of said section six. [39 Stat. L. 120, as amended by 39 Stat. L. 582.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 117, and was amended to read as here given by the Naval Appropriation Act of Aug. 29, 1916, ch. 417. As originally enacted it was as follows:

"Sec. 6. That unless otherwise specially authorized by law no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, but this shall not apply to retired officers of the Army, Navy, or Marine Corps whenever they may be appointed or elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia."

This section is not to apply to certain school teachers in the District of Columbia by virtue of the provisions of the Act of Oct. 6, 1917, ch. —, § 9, *infra*, p. 721.

See the Act of July 3, 1918, ch. —, § 6, *infra*, p. 721.

[SEC. 1.] [Salaries — source — supplementing by individuals, etc., as misdemeanor.] * * * That on and after July first, nineteen hundred and nineteen, no Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. Any person violating any of the terms of this proviso shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$1,000 or imprisonment for not less than six months, or by both such fine and imprisonment as the court may determine. [39 Stat. L. 1106.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

SEC. 8. [Employees — increased compensation.] That in determining the right of employees to increased compensation as heretofore authorized by law at rates of five and ten per centum per annum for the fiscal year nineteen hundred and eighteen, such employees as are employed on piecework, by the hour, or at per diem rates, shall be entitled to receive, from July first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, the increased compensation at the rate of ten per centum when the fixed rate of compensation for the regular working hours and on the basis of three hundred and twelve days in said year would amount to less than \$1,200, and at the rate of five per centum when not less than \$1,200 and not more than \$1,800: *Provided*, That this method of computation shall not apply to any per diem employees regularly paid a per diem for every day in the year. [— Stat. L. —.]

The foregoing section 8 and the following section 9 are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

SEC. 9. [Persons receiving more than one salary — additional compensation.] That section six of the legislative, executive, and judicial appropriation Act, approved May tenth, nineteen hundred and sixteen, as amended by the naval appropriation Act, approved August twenty-ninth, nineteen hundred and sixteen, shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vacation schools.

See the note to the preceding section 8 of this Act.

The Act of May 10, 1916, ch. 117, § 6, as amended by the Act of Aug. 29, 1916, ch. 417, mentioned in the text, is given *supra*, p. 719.

SEC. 6. [Civilian employees of United States and District of Columbia — increase of salary — conditions — exceptions — appropriations.] That all civilian employees of the Governments of the United States and the District of Columbia who receive a total of compensation at the rate of \$2,500 per annum or less, except as otherwise provided in this section, shall receive, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, additional compensation at the rate of \$120 per annum: *Provided*, That such employees as receive a total of annual compensation at a rate more than \$2,500 and less than \$2,620 shall receive additional compensation at such a rate per annum as may be necessary to make their salaries, plus their additional compensation, at the rate of \$2,620 per annum, and no employee shall receive additional compensation under this section at a rate which is more than thirty per centum of the rate of the total annual compensation received by such employee: *Provided further*, That the increased compensation at the rates of five and ten per centum for the fiscal year ending June thirtieth, nineteen hundred and eighteen, shall not be computed as salary in construing this section: *Provided further*, That where an employee in the service on June thirtieth, nineteen hundred and seventeen, has received during the fiscal year nineteen hundred and eighteen, or shall receive during the fiscal year nineteen hundred and nineteen an increase of salary at a rate in excess of \$200 per annum, or where an employee whether previously in the service or not, has entered the service since June thirtieth, nineteen hundred and seventeen, whether such employee has received an increase in salary or not, such employees shall be granted the increased compensation provided herein only when and upon the certification of the person in the legislative branch or the head of the department or establishment employing such persons of the ability and qualifications personal to such employees as would justify such increased compensation: *Provided further*, That the increased compensation provided in this section to employees whose pay is adjusted from time to time through wage boards or similar authority shall be taken into consideration by such wage boards or similar authority in adjusting the pay of such employees.

The provisions of this section shall not apply to the following: Employees paid from the postal revenues and sums which may be advanced from the Treasury to meet deficiencies in the postal revenues; employees of the Panama Canal on the Canal Zone; employees of the Alaskan Engineering

Commission in Alaska; employees paid from lump-sum appropriations in bureaus, divisions, commissions, or any other governmental agencies or employments created by law since January first, nineteen hundred and sixteen; employees whose duties require only a portion of their time, except charwomen, who shall be included; employees whose services are utilized for brief periods at intervals; persons employed by or through corporations, firms, or individuals acting for or on behalf of or as agents of the United States or any department or independent establishment of the Government of the United States in connection with construction work or the operation of plants; employees who receive a part of their pay from any outside sources under cooperative arrangements with the Government of the United States or the District of Columbia; employees who serve voluntarily or receive only a nominal compensation, and employees who may be provided with special allowances because of their service in foreign countries. The provisions of this section shall not apply to employees of the railroads taken over by the United States, and nothing contained herein shall be deemed a recognition of the employees of such railroads as employees of the United States.

Section six of the legislative, executive, and judicial appropriation Act approved May tenth, nineteen hundred and sixteen, as amended by the naval appropriation Act approved August twenty-ninth, nineteen hundred and sixteen, shall not operate to prevent anyone from receiving the additional compensation provided in this section who otherwise is entitled to receive the same.

Such employees as are engaged on piecework, by the hour, or at per diem rates, if otherwise entitled to receive the additional compensation shall receive the same at the rate to which they are entitled in this section when their fixed rate of pay for the regular working hours and on the basis of three hundred and thirteen days in the said fiscal year would amount to \$2,500 or less: *Provided*, That this method of computation shall not apply to any per diem employees regularly paid a per diem for every day in the year.

So much as may be necessary to pay the increased compensation provided in this section to employees of the Government of the United States is appropriated out of any money in the Treasury not otherwise appropriated.

So much as may be necessary to pay the increased compensation provided in this section to employees of the government of the District of Columbia is appropriated, one-half out of any money in the Treasury not otherwise appropriated and one-half out of the revenues of the District of Columbia, except to employees of the Washington Aqueduct and the water department, which shall be paid entirely from the revenues of the water department.

So much as may be necessary to pay the increased compensation provided in this section to persons employed under trust funds who may be construed to be employees of the Government of the United States or the District of Columbia is authorized to be paid, respectively, from such trust funds.

Reports shall be submitted to Congress on the first day of the next regular session showing for the first four months of the fiscal year the

average number of employees in each department, bureau, office, or establishment receiving the increased compensation at the rate of \$120 per annum and the average number by grades receiving the same at each other rate. [— *Stat. L.* —.]

This section 6 is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

The Act of May 10, 1916, ch. 117, § 6, mentioned in the text, is given as amended by the Act of Aug. 29, 1916, ch. 417, *supra*. p. 719.

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I. NATIONAL PARK SERVICE

An Act To establish a National Park Service, and for other purposes.

[*Act of Aug. 25, 1916, ch. 408, 39 Stat. L. 535.*]

[**SEC. 1.**] [**National Park Service — creation — officers and employees — purpose of service.**] That there is hereby created in the Department

of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the Secretary and who shall receive a salary of \$4,500 per annum. There shall also be appointed by the Secretary the following assistants and other employees at the salaries designated: One assistant director, at \$2,500 per annum; one chief clerk, at \$2,000 per annum; one draftsman, at \$1,800 per annum; one messenger, at \$600 per annum; and, in addition thereto, such other employees as the Secretary of the Interior shall deem necessary: *Provided*, That not more than \$8,100 annually shall be expended for salaries of experts, assistants, and employees within the District of Columbia not herein specifically enumerated unless previously authorized by law. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. [39 Stat. L. 535.]

SEC. 2. [Duties of director — cooperation of Secretary of Agriculture.] That the director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several parks and national monuments which are now under the jurisdiction of the Department of the Interior and of the Hot Springs Reservation in the State of Arkansas, and of such other national parks and reservations of like character as may be hereafter created by Congress: *Provided*, That in the supervision, management, and control of national monuments contiguous to national forests the Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior. [39 Stat. L. 535.]

SEC. 3. [Rules and regulations — publication — violation — disposition of timber — leases and privileges.] That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violations of any of the rules and regulations authorized by this Act shall be punished as provided for in section fifty of the Act entitled "An Act to codify and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by section six of the Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth United States Statutes at Large, page eight hundred and fifty-seven). He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. He may also grant

privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding twenty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: *Provided, however,* That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze live stock within any national park, monument, or reservation herein referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to Yellowstone National Park. [39 Stat. L. 535.]

For Penal Laws, § 50, mentioned in the text, as originally enacted, see 1909 Supp. Fed. Stat. Ann. 419; for said section 50, as amended by the Act of June 25, 1910, ch. 431, § 6, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 98, 7 Fed. Stat. Ann. (2d ed.) 618.

SEC. 4. [Effect on prior Act.] That nothing in this Act contained shall affect or modify the provisions of the Act approved February fifteenth, nineteen hundred and one, entitled "An Act relating to rights of way through certain parks, reservations, and other public lands." [39 Stat. L. 536.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in this section, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

II. CRATER LAKE NATIONAL PARK

An Act To accept the cession by the State of Oregon of exclusive jurisdiction over the lands embraced within the Crater Lake National Park, and for other purposes.

[Act of Aug. 21, 1916, ch. 368, 39 Stat. L. 521.]

[SEC. 1.] [Crater Lake National Park — jurisdiction of United States — laws applicable.] That the provisions of the act of the Legislature of the State of Oregon, approved January twenty-fifth, nineteen hundred and fifteen, ceding to the United States exclusive jurisdiction over the territory embraced within the Crater Lake National Park, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. All the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Oregon. [39 Stat. L. 521.]

SEC. 2. [Judicial district.] That said park shall constitute a part of the United States judicial district for Oregon, and the district court of the United States in and for Oregon shall have jurisdiction of all offenses committed within said boundaries. [39 Stat. L. 522.]

SEC. 3. [Offenses — punishment.] That if any offense shall be committed in the Crater Lake National Park, which offense is not prohibited or the punishment for which is not specifically provided for by any law of the United States, the offender shall be subject to the same punishment as the laws of the State of Oregon in force at the time of the commission of the offense may provide for a like offense in said State; and no subsequent repeal of any such law of the State of Oregon shall affect any prosecution for said offense committed within said park. [39 Stat. L. 522.]

SEC. 4. [Hunting and fishing — rules and regulations.] That all hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes of the park. Possession within said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this Act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or other matter or thing growing or being thereon or situate therein, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 522.]

SEC. 5. [Forfeiture of property used illegally.] That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or animals shall be forfeited to the United States and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation, such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. [39 Stat. L. 523.]

SEC. 6. [United States Commissioner — appointment — jurisdiction — appeals.] That the United States District Court for Oregon shall appoint a commissioner who shall reside in the park and who shall have jurisdiction to hear and act upon all complaints made of any violations of law or of the rules and regulations made by the Secretary of the Interior for the government of the park and for the protection of the animals, birds, and fish, and objects of interest therein, and for other purposes authorized by this Act.

Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with a violation of the rules and regulations, or with a violation of any of the provisions of this Act prescribed for the government of said park and for the protection of the animals, birds, and fish in said park, and to try the person so charged, and if found guilty, to impose punishment and to adjudge the forfeiture prescribed.

In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States District Court for Oregon, and the United States court in said district shall prescribe the rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States District Court. [39 Stat. L. 523.]

SEC. 7. [Process — issuance — bail.] That any such commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission within said boundaries of any criminal offense not covered by the provisions of section four of this Act to hear the evidence introduced, and if he is of opinion that probable cause is shown for holding the person so charged for trial shall cause such person to be safely conveyed to a secure place of confinement within the jurisdiction of the United States District Court for Oregon, and certify a transcript of the record of his proceedings and the testimony in the case to said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. [39 Stat. L. 523.]

SEC. 8. [Service of process — arrest without process.] That all process issued by the commissioner shall be directed to the marshal of the United States for the district of Oregon, but nothing herein contained shall be so

construed as to prevent the arrest by any officer or employee of the Government or any person employed by the United States in the policing of said reservation within said boundaries without process of any person taken in the act of violating the law or this Act or the regulations prescribed by said Secretary as aforesaid. [39 Stat. L. 523.]

SEC. 9. [Salary of Commissioner.] That the commissioner provided for in this Act shall be paid an annual salary of \$1,500, payable quarterly: *Provided*, That the said commissioner shall reside within the exterior boundaries of said Crater Lake National Park, at a place to be designated by the court making such appointment: *Provided further*, That all fees, costs, and expenses collected by the commissioner shall be disposed of as provided in section eleven of this Act. [39 Stat. L. 523.]

SEC. 10. [Fees, costs, and expenses — payment.] That all fees, costs, and expenses arising in cases under this Act and properly chargeable to the United States shall be certified, approved, and paid as are like fees, costs, and expenses in the courts of the United States. [39 Stat. L. 524.]

SEC. 11. [Deposit of fines and costs.] That all fines and costs imposed and collected shall be deposited by said commissioner of the United States, or the marshal of the United States collecting the same, with the clerk of the United States District Court for Oregon. [39 Stat. L. 524.]

SEC. 12. [Notice of approval of Act.] That the Secretary of the Interior shall notify, in writing, the governor of the State of Oregon of the passage and approval of this Act. [39 Stat. L. 524.]

[SEC. 1.] **[Crater Lake National Park — acceptance of patented lands, etc.]** * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Crater Lake National Park that may be donated for park purposes. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

III. GLACIER NATIONAL PARK

An Act To authorize an exchange of lands with owners of private holdings within the Glacier National Park.

[Act of March 3, 1917, ch. 164, 39 Stat. L. 1122.]

[SEC. 1.] **[Glacier National Park — elimination of private holdings — exchange of lands.]** That the Secretary of the Interior, for the purpose of eliminating private holdings within the Glacier National Park and the preservation intact of the natural forest along the roads in the scenic portions of the park, both on patented and park lands, is hereby empowered,

in his discretion, to obtain for the United States the complete title to any or all of the lands held in private or State ownership within the boundaries of said park within townships thirty-two and thirty-three north, ranges eighteen and nineteen west of Montana principal meridian, by the exchange of dead, decadent, or matured timber of approximately equal values that can be removed from any part of the park without injuriously affecting the scenic beauty thereof; or upon the approval of the Secretary of Agriculture, the timber to be selected or exchanged may be taken from the Government lands within the metes and bounds of the national forests within the State of Montana. [39 Stat. L. 1122.]

SEC. 2. [Value of lands offered for exchange — determination.] That the value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of the timber on park lands, or on Government lands within the metes and bounds of the national forests within the State of Montana, proposed to be given in exchange for such patented lands, shall be ascertained in such manner as the Secretary of the Interior and the Secretary of Agriculture may jointly in their discretion direct, and all expenses incident to ascertaining such values shall be paid by the owners of said patented lands; and such owners shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and if the value of timber on park lands or on the Government lands in the national forests within the State of Montana exceeds the value of the patented lands deeded to the Government in exchange, such excess shall be paid to the Secretary of the Interior by the owners of the patented lands before any timber is removed, and shall be deposited and covered into the Treasury as miscellaneous receipts: *Provided*, That the lands conveyed to the Government under this Act shall become a part of the Glacier National Park. [39 Stat. L. 1122.]

SEC. 3. [Cutting and removing timber — regulations.] That all timber on Government lands in the park must be cut and removed under regulations to be prescribed by the Secretary of the Interior, and any damage which may result to the roads or any part of the park or the national forests in consequence of the cutting and removal of the timber therefrom shall be borne by the owners of the patented lands, and bonds satisfactory to the Secretary of the Interior and the Secretary of Agriculture, jointly, must be given for the payment of such damages, if any, as shall be determined by the Secretary of the Interior so far as the same relates to lands within a national park and by the Secretary of Agriculture where the same relates to lands in the national forests: *Provided further*, That the Secretary of Agriculture and the Secretary of the Interior shall jointly report to Congress in detail the factors upon which valuations were made. [39 Stat. L. 1122.]

[SEC. 1.] [Glacier National Park — acceptance of buildings, etc.]
* * * The Secretary of the Interior is authorized, in his discretion, to accept buildings, moneys, or other property which may be useful in the

betterment of the administration and affairs of the Glacier National Park under his supervision, and which may be donated for park purposes. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

IV. HAWAII NATIONAL PARK

An Act To establish a national park in the Territory of Hawaii.

[*Act of Aug. 1, 1916, ch. 264, 39 Stat. L. 432.*]

[SEC. 1.] [Hawaii National Park — creation — boundaries.] That the tracts of land on the island of Hawaii and on the island of Maui, in the Territory of Hawaii, hereinafter described, shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known as Hawaii National Park. Said tracts of land are described as follows:

First. All that tract of land comprising portions of the lands of Kapapala and Keauhou, in the district of Kau, and Kahaualea, Panaunui, and Apua, in the district of Puna, on the island of Hawaii, containing approximately thirty-five thousand eight hundred and sixty-five acres, bounded as follows: Beginning at a point on the west edge of the Keamoku Aa Flow (lava flow of eighteen hundred and twenty-three), from which point the true azimuth and distance to Government survey trigonometrical station Ohaikea is one hundred and sixty-six degrees twenty minutes, six thousand three hundred and fifty feet, and running by true azimuths: (First) Along the west edge of the Keamoku lava flow in a northeasterly and northwesterly direction, the direct azimuth and distance being one hundred and ninety-eight degrees ten minutes, fourteen thousand seven hundred feet; (second) two hundred and fifty-six degrees, eleven thousand four hundred feet, more or less, across the land of Kapapala and Keauhou to a marked point on the Humuula trail; (third) three hundred and twenty-eight degrees fifteen minutes, eight thousand seven hundred and twenty-five feet, across the land of Keauhou to the top of the fault north of the Kau road; (fourth) along the fault in a northeasterly direction, the direction azimuth and distance being two hundred and fifty-one degrees and thirty minutes, four thousand three hundred and thirty feet; (fifth) two hundred and forty-five degrees, six thousand feet, to a point near the southwest boundary of the land of Olaa; (sixth) three hundred and thirty-seven degrees ten minutes, eight thousand six hundred and fifty feet, more or less, to the junction of the Hilo and Keauhou roads; (seventh) three hundred and thirty-three degrees and twenty minutes, three thousand three hundred feet, more or less, to the southwest corner of the land of Keaau; (eighth) three hundred and thirty-two degrees and ten minutes, seven thousand feet, along the land of Kahaualea; (ninth) two hundred and eighty-one degrees, thirty thousand three hundred and seventy-five feet, more or less, across the land of Kahaualea, passing through the north corner of the land of Panaunui, to the north corner of the land of Laeapuki; (tenth) thirty-one degrees thirty minutes, thirteen thousand two hundred feet, more or less,

along the land of Laeapuki and across the land of Panaunui; (eleventh) eighty-nine degrees and ten minutes, thirty-two thousand nine hundred feet, more or less, across the land of Panaunui, Apua, and Keauhou to "Palilele-o-Kalihipaa," the boundary point of the Keauhou-Kapapala boundary; (twelfth) fifty-one degrees and thirty minutes, five thousand and five hundred feet, across the land of Kapapala; (thirteenth) one hundred and two degrees and fifty minutes, nineteen thousand one hundred and fifty feet, across the land of Kapapala to a small cone about one thousand five hundred feet southwest of Puu Koa trigonometrical station; (fourteenth) one hundred and sixty-six degrees twenty minutes, twenty-one thousand feet, across the land of Kapapala to the point of beginning.

Second. All that tract of land comprising portions of the lands of Kapapala and Kahuku, in the district of Kau, island of Hawaii; Keauhou second, in the district of North Kona; and Kaohe, in the district of Hamakua, containing seventeen thousand nine hundred and twenty acres, bounded as follows: Beginning at Pohaku Hanalei of Humuula, a small cone on the brow of Mauna Loa, and at the common boundary points of the lands of Humuula, Kapapala, and Kaohe, from which the true azimuth and distance to Government survey trigonometrical station Omaokoili is one hundred and ninety-five degrees twelve minutes eighteen seconds, seventy-eight thousand two hundred and eighty-six feet, and running by true azimuths: First two hundred and ninety-eight degrees, five thousand two hundred and forty feet; second, twenty-eight degrees, thirty-six thousand nine hundred and sixty feet; third, one hundred and eighteen degrees, twenty-one thousand one hundred and twenty feet; fourth, two hundred and eight degrees, thirty-six thousand nine hundred and sixty feet; fifth, two hundred and ninety-eight degrees, fifteen thousand eight hundred and eighty feet, to the point of beginning.

Third. A strip of land of sufficient width for a road to connect the two tracts of land on the island of Hawaii above described, the width and location of which strip shall be determined by the Secretary of the Interior.

Fourth. All that tract of land comprising portions of the lands of Honuauula and Kula, in the district of Makawao, and Kipahulu, Kaupo, and Kahikinui, in the district of Hana, on the island of Maui, containing approximately twenty-one thousand one hundred and fifty acres, bounded as follows: Beginning at a point called Kolekole, on the summit near the most western point of the rim of the crater of Haleakala, and running by approximate azimuths and distances: First, hundred and ninety-three degrees forty-five minutes nineteen thousand three hundred and fifty feet along the west slope of the crater of Haleakala to a point called Puu-o-Ili; second, two hundred and sixty-eight degrees twenty-three thousand feet up the western slope and across Koolau Gap to the point where the southwest boundary of Koolau Forest Reserve crosses the east rim of Koolau Gap; third, three hundred and six degrees thirty minutes seventeen thousand one hundred and fifty feet along the southwest boundary of Koolau Forest Reserve to a point called Palalia, on the east rim of the crater of Haleakala; fourth, along the east rim of the crater of Haleakala, the direct azimuth and distance being three hundred and fifty-four degrees fifteen minutes eighteen thousand three hundred feet to a point on the east rim of Kaupo Gap, shown on Hawaiian Government survey maps at an elevation of four

thousand two hundred and eight feet; fifth, eighty-eight degrees forty-five minutes three thousand three hundred feet across Kaupo Gap to a point called Kaumikaohu, on the boundary line between the lands of Kipahulu and Kahikinui; sixth, one hundred and two degrees and thirty minutes forty thousand seven hundred and fifty feet along the south slope of the crater of Haleakala to the point of beginning. [39 Stat. L. 432.]

SEC. 2. [Existing claims, etc.—easements—rights of way.] That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. Whenever consistent with the primary purposes of the park the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and the national forests for irrigation and other purposes, shall be and remain applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem wise, grant easements or rights of way for steam, electric, or similar transportation upon or across the park. [39 Stat. L. 433.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in this section, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

SEC. 3. [Land held in private or municipal ownership as subject to Act.] That no lands located within the park boundaries now held in private or municipal ownership shall be affected by or subject to the provisions of this Act. [39 Stat. L. 434.]

SEC. 4. [Management of park—leases.] That the said park shall be under the executive control of the Secretary of the Interior whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within said park, and their retention in their natural condition as nearly as possible. The Secretary may in his discretion grant leases for terms not exceeding twenty years, at such annual rental as he may determine, of parcels of land in said park of not more than twenty acres in all to any one person, corporation, or company for the erection and maintenance of buildings for the accommodation of visitors; but no such lease shall include any of the objects of curiosity or interest in said park or exclude the public from free and convenient approach thereto or convey, either expressly or by implication, any exclusive privilege within the park except upon the premises held thereunder and for the time granted therein; and every such lease shall require the lessee to observe and obey each and every provision in any Act of Congress and every rule, order, or regulation of the Secretary of the Interior concerning the use, care, management, or government of the park, or any object or property therein, under penalty of forfeiture of such lease. The Secretary may in his discretion grant to persons or corporations now holding leases of land in the park, upon the surrender thereof,

new leases hereunder, upon the terms and stipulations contained in their present leases, with such modifications, restrictions, and reservations as he may prescribe. All of the proceeds of said leases and other revenues that may be derived from any source connected with the park shall be expended under the direction of the Secretary, in the management and protection of the same and the construction of roads and paths therein. The Secretary may also, in his discretion permit the erection and maintenance of buildings in said park for scientific purposes: *Provided*, That no appropriation for the maintenance, supervision, and improvement of said park in excess of \$10,000 annually shall be made unless the same shall have first been expressly authorized by law: *And provided further*, That no appropriation shall be made for the improvement or maintenance of said park until proper conveyances shall be made to the United States of such perpetual easements and rights of way over private lands within the exterior boundaries of said park as the Secretary of the Interior shall find necessary to make said park reasonably accessible in all its parts, and said Secretary shall when such easements and rights of way have been conveyed to the United States report the same to Congress. [39 Stat. L. 437.]

V. LASSEN VOLCANIC NATIONAL PARK

An Act To establish the Lassen Volcanic National Park in the Sierra Nevada Mountains in the State of California, and for other purposes.

[Act of Aug. 9, 1916, ch. 302, 39 Stat. L. 442.]

[SEC. 1.] [Lassen Volcanic National Park — creation — boundaries.]

That all those certain tracts, pieces, or parcels of land lying and being situate in the State of California and within the boundaries particularly described as follows, to wit: Beginning at the northeast corner of section three, township thirty-one, range six east, Mount Diablo meridian, California; thence southerly to the southeast corner of said section; thence easterly to the northeast corner of the northwest quarter of section eleven, said township; thence southerly to southeast corner of the southwest quarter of section fourteen, said township; thence easterly to the northeast corner of the northwest quarter of section twenty-four, said township; thence southerly to the southeast corner of the southwest quarter of section twenty-five, said township; thence westerly to the southwest corner of section twenty-six, said township; thence southerly to the southeast corner of section thirty-four, said township; thence westerly along the sixth standard parallel north, allowing for the proper offsets, to the northeast corner of section three, township thirty north, range six east; thence southerly to the southeast corner of section twenty-seven, said township; thence westerly to the southwest corner of the southeast quarter of section twenty-eight, said township; thence northerly to the northwest corner of the southeast quarter of said section; thence westerly to the southwest corner of the northwest quarter of said section; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty, said township; thence northerly to the

northwest corner of the southeast quarter of said section; thence westerly to the range line between ranges five and six east; thence southerly along said range line to the southeast corner of township thirty north, range five east; thence westerly along the township line between townships twenty-nine and thirty north to the southwest corner of section thirty-three, township thirty north, range five east; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty-nine, said township; thence northerly to the northwest corner of the southeast quarter of said section; thence westerly to the southwest corner of the northwest quarter of said section; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty, township thirty north, range four east; thence northerly to the northwest corner of the southeast quarter of section eight, said township; thence easterly to the northeast corner of the southwest quarter of section nine, said township; thence northerly to the township line between townships thirty and thirty-one north; thence easterly along the sixth standard parallel north, allowing for the proper offsets, to the southwest corner of section thirty-three, township thirty-one north, range four east; thence northerly to the northwest corner of section twenty-one, said township; thence easterly to the range line between ranges four and five east; thence northerly along said range line to the northwest corner of fractional section eighteen, township thirty-one north, range five east; thence easterly to the southwest corner of section twelve, said township; thence northerly to the northwest corner of section one, said township; thence easterly along the township line between townships thirty-one and thirty-two north to the northeast corner of section three, township thirty-one north, range six east, the place of beginning, are hereby reserved and withdrawn from settlement, occupancy, disposal, or sale, under the laws of the United States, and said tracts are dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people of the United States under the name and to be known and designated as the Lassen Volcanic National Park; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and be removed therefrom: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: *Provided further*, That rights of way for steam or electric railways, automobiles, or wagon roads may be acquired within said Lassen Volcanic National Park under filings or proceedings hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the national forest lands of the United States when the construction of such roads will not interfere with the objects of the national park, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project; that no lands located within the park boundaries now held in private, municipal, or State ownership shall be affected by or subject to the provisions of this Act: *And provided further*, That no lands within the limits of said park hereby created belong-

ing to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park. [39 Stat. L. 442.]

SEC. 2. [Management — rules and regulations — leases.] That said park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same. Such regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation from injury or spoliation of all timber, mineral deposits, and natural curiosities or wonders within said park and their retention in their natural condition as far as practicable and for the preservation of the park in a state of nature so far as is consistent with the purposes of this Act. He shall provide against the wanton destruction of the fish and game found within said park and against their capture or destruction for purposes of merchandise or profit, and generally shall be authorized to take all such measures as shall be necessary to fully carry out the objects and purposes of this Act. Said Secretary may, in his discretion, execute leases to parcels of grounds not exceeding ten acres in extent at any one place to any one person or persons or company for not to exceed twenty years when such ground is necessary for the erection of buildings for the accommodation of visitors and to parcels of ground not exceeding one acre in extent and for not to exceed twenty years to persons who have heretofore erected, or whom he may hereafter authorize to erect, summer homes or cottages. Such leases or privileges may be renewed or extended at the expiration of the terms thereof. No exclusive privilege, however, shall be granted within the park except upon the ground leased. The regulations governing the park shall include provisions for the use of automobiles therein and the reasonable grazing of stock. [39 Stat. L. 444.]

SEC. 3. [Sale of timber.] That the Secretary of the Interior may also sell and permit the removal of such matured or dead or down timber as he may deem necessary or advisable for the protection or improvement of the park. [39 Stat. L. 444.]

SEC. 4. [Charges for leases, etc.] That the Secretary of the Interior may exact such charges as he deems proper for leases and all other privileges granted hereunder. [39 Stat. L. 444.]

SEC. 5. [Appropriation — authorization.] That no appropriation for the maintenance, supervision, or improvement of said park in excess of \$5,000 annually shall be made unless the same shall have first been expressly authorized by law. [39 Stat. L. 444.]

VI. MESA VERDE NATIONAL PARK

[SEC. 1.] [**Mesa Verde National Park — acceptance of patented lands, etc.**] * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mesa Verde National Park that may be donated for park purposes. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

VII. MOUNT MCKINLEY NATIONAL PARK

An Act To establish the Mount McKinley National Park, in the Territory of Alaska.

[*Act of Feb. 26, 1917, ch. 121, 39 Stat. L. 938.*]

[SEC. 1.] [**Mount McKinley National Park — establishment — boundaries.**] That the tract of land in the Territory of Alaska particularly described by and included within the metes and bounds, to wit: Beginning at a point as shown on Plate III, reconnoissance map of the Mount McKinley region, Alaska, prepared in the Geological Survey, edition of nineteen hundred and eleven, said point being at the summit of a hill between two forks of the headwaters of the Toklat River, approximate latitude sixty-three degrees forty-seven minutes, longitude one hundred and fifty degrees twenty minutes; thence south six degrees twenty minutes west nineteen miles; thence south sixty-eight degrees west sixty miles; thence in a southeasterly direction approximately twenty-eight miles to the summit of Mount Russell; thence in a northeasterly direction approximately eighty-nine miles to a point twenty-five miles due south of a point due east of the point of beginning; thence due north twenty-five miles to said point; thence due west twenty-eight and one-half miles to the point of beginning, is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the Mount McKinley National Park. [*39 Stat. L. 938.*]

SEC. 2. [**Effect on existing claims, etc.**] That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant locator, or entryman to the full use and enjoyment of his land. [*39 Stat. L. 938.*]

SEC. 3. [**Rights of way for irrigation and other purposes.**] That whenever consistent with the primary purposes of the park, the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and national forests for irrigation and

other purposes, shall be and remain applicable to the lands included within the park. [39 Stat. L. 938.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in the text, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

SEC. 4. [**Mineral land laws — applicability.**] Nothing in this Act shall in any way modify or effect the mineral land laws now applicable to the lands in the said park. [39 Stat. L. 938.]

SEC. 5. [**Control and management — regulations.**] That the said park shall be under the executive control of the Secretary of the Interior, and it shall be the duty of the said executive authority, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof. [39 Stat. L. 938.]

SEC. 6. [**Establishment as game refuge — limitation on killing of game.**] That the said park shall be, and is hereby, established as a game refuge, and no person shall kill any game in said park except under an order from the Secretary of the Interior for the protection of persons or to protect or prevent the extermination of other animals or birds: *Provided*, That prospectors and miners engaged in prospecting or mining in said park may take and kill therein so much game or birds as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly. [39 Stat. L. 939.]

SEC. 7. [**Leases — privileges and concessions.**] That the said Secretary of the Interior may, in his discretion, execute leases to parcels of ground not exceeding twenty acres in extent for periods not to exceed twenty years whenever such ground is necessary for the erection of establishments for the accommodation of visitors; may grant such other necessary privileges and concessions as he deems wise for the accommodation of visitors; and may likewise arrange for the removal of such mature or dead or down timber as he may deem necessary and advisable for the protection and improvement of the park: *Provided*, That no appropriation for the maintenance of said park in excess of \$10,000 annually shall be made unless the same shall have first been expressly authorized by law. [39 Stat. L. 939.]

SEC. 8. [**Offenses — punishment.**] That any person found guilty of violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 939.]

VIII. MOUNT RAINIER NATIONAL PARK

An Act To accept the cession by the State of Washington of exclusive jurisdiction over the lands embraced within the Mount Rainier National Park, and for other purposes.

[Act of June 30, 1916, ch. 197, 39 Stat. L. 243.]

[SEC. 1.] [Mount Rainier National Park—cession of jurisdiction over.] That the provisions of the act of the legislature of the State of Washington, approved March sixteenth, nineteen hundred and one, ceding to the United States exclusive jurisdiction over the territory embraced within the Mount Rainier National Park, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. All the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Washington. *[39 Stat. L. 243.]*

SEC. 2. [Park in what judicial district.] That said park shall constitute a part of the United States judicial district for the western district of Washington, and the district court of the United States in and for said district shall have jurisdiction of all offenses committed within said boundaries. *[39 Stat. L. 244.]*

SEC. 3. [Offenses — punishment.] That if any offense shall be committed in the Mount Rainier National Park, which offense is not prohibited or the punishment for which is not specifically provided for by any law of the United States, the offender shall be subject to the same punishment as the laws of the State of Washington in force at the time of the commission of the offense may provide for a like offense in said State; and no subsequent repeal of any such law of the State of Washington shall affect any prosecution for said offense committed within said park. *[39 Stat. L. 244.]*

SEC. 4. [Hunting and fishing — rules and regulations.] That all hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all

timber, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park. Possession within said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this Act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or other matter or thing growing or being thereon or situated therein, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 244.]

For the provisions of the Act of May 27, 1908, ch. 200, § 1, mentioned in the text, see 8 Fed. Stat. Ann. (2d ed.) 986.

SEC. 5. [Forfeiture of guns, etc.] That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or animals shall be forfeited to the United States and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation, such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. [39 Stat. L. 245.]

SEC. 6. [Commissioner — appointment — jurisdiction — appeals.] That the United States District Court for the Western District of Washington

shall appoint a commissioner who shall reside in the park and who shall have jurisdiction to hear and act upon all complaints made of any violations of law or of the rules and regulations made by the Secretary of the Interior for the government of the park and for the protection of the animals, birds, and fish, and objects of interest therein, and for other purposes authorized by this Act.

Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with a violation of the rules and regulations, or with a violation of any of the provisions of this Act prescribed for the government of said park and for the protection of the animals, birds, and fish in said park, and to try the person so charged, and, if found guilty, to impose punishment and to adjudge the forfeiture prescribed.

In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States District Court for the Western District of Washington, and the United States district court in said district shall prescribe the rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court. [39 Stat. L. 245.]

SEC. 7. [Process — bail.] That any such commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission within said boundaries of any criminal offense not covered by the provisions of section four of this Act to hear the evidence introduced, and if he is of opinion that probable cause is shown for holding the person so charged for trial shall cause such person to be safely conveyed to a secure place of confinement within the jurisdiction of the United States District Court for the Western District of Washington, and certify a transcript of the record of his proceedings and the testimony in the case to said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. [39 Stat. L. 245.]

SEC. 8. [Service of process — arrest without process.] That all process issued by the commissioner shall be directed to the marshal of the United States for the western district of Washington, but nothing herein contained shall be so construed as to prevent the arrest by any officer or employee of the Government or any person employed by the United States in the policing of said reservation within said boundaries without process of any person taken in the act of violating the law or this Act or the regulations prescribed by said Secretary as aforesaid. [39 Stat. L. 245.]

SEC. 9. [Salary of Commissioner.] That the commissioner provided for in this Act shall be paid an annual salary of \$1,500, payable quarterly: *Provided*, That the said commissioner shall reside within the exterior boundaries of said Mount Rainier National Park, at a place to be designated by the court making such appointment: *And provided further*, That all fees, costs, and expenses collected by the commissioner shall be disposed of as provided in section eleven of this Act. [39 Stat. L. 246.]

SEC. 10. [Fees, costs, and expenses.] That all fees, costs, and expenses arising in cases under this Act and properly chargeable to the United States shall be certified, approved, and paid as are like fees, costs, and expenses in the courts of the United States. [*39 Stat. L. 246.*]

SEC. 11. [Fines and costs — deposits.] That all fines and costs imposed and collected shall be deposited by said commissioner of the United States, or the marshal of the United States collecting the same, with the clerk of the United States District Court for the Western District of Washington. [*39 Stat. L. 246.*]

SEC. 12. [Notice of passage of Act.] That the Secretary of the Interior shall notify, in writing, the governor of the State of Washington of the passage and approval of this Act. [*39 Stat. L. 246.*]

[**SEC. 1.**] [**Mount Ranier National Park — acceptance of patented lands, etc.**] * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mount Ranier National Park that may be donated for park purposes. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

IX. ROCKY MOUNTAIN NATIONAL PARK

[**SEC. 1.**] [**Rocky Mountain National Park — acceptance of patented lands, etc.**] * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Rocky Mountain National Park that may be donated for park purposes. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

An Act To amend “An act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes,” approved May seventh, eighteen hundred and ninety-four.

[*Act of June 28, 1916, ch. 179, 39 Stat. L. 238.*]

[**Yellowstone National Park — hunting and fishing — violation of regulations — former Act amended.**] That the following paragraph, forming part of section four of an Act entitled “An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes,” approved May seventh, eighteen hundred and ninety-four, to wit:

“Any person found guilty of violating any of the provisions of this act or any rule or regulation that may be promulgated by the Secretary

of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$1,000 or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings," be amended to read as follows:

"Any person found guilty of violating any of the provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings." [39 Stat. L. 238.]

For the Act of May 7, 1894, ch. 72, § 4, amended by this Act, see 6 Fed. Stat. Ann. 619; 8 Fed. Stat. Ann. (2d ed.) 997.

X. NATIONAL MILITARY PARKS

An Act To establish a national military park at the battlefield of Guilford Courthouse.

[Act of March 2, 1917, ch. 152, 39 Stat. L. 996.]

[SEC. 1.] [Battlefield of Guilford Courthouse—creation of national military park—boundaries.] That in order to preserve for historical and professional military study one of the most memorable battles of the Revolutionary War, the battlefield of Guilford Courthouse, in the State of North Carolina, is hereby declared to be a national military park whenever the title to the same shall have been acquired by the United States; that is to say, the area inclosed by the following lines:

Those certain tracts or parcels of land in the county of Guilford and State of North Carolina, Morehead Township, more particularly described as follows:

First tract: Beginning at a stone on the west side of the Greensboro macadam road; thence north eighty-six degrees five minutes west eight hundred and seventy-seven and one-tenth feet to a stone; thence north seven degrees fifty-five minutes west four hundred and eight and eight-tenths feet to a stone; thence north seven degrees five minutes east one hundred and ninety and eight-tenths feet to a stone; thence north sixty degrees forty-five minutes east two hundred and sixty-five and four-tenths feet to a stone; thence north fourteen degrees fifteen minutes west seven hundred and one and six-tenths feet to a stone; thence north eight degrees forty-five minutes west three hundred and forty-eight and one-tenth feet

to a stone; thence north seventy-one degrees thirty-five minutes east nine hundred and thirty-seven and eight-tenths feet to a stone; thence south fifty degrees forty-five minutes east one hundred and fifty-seven and two-tenths feet to a stone; thence north seventy degrees forty-five minutes east eight hundred and seventy-five and five-tenths feet to a stone; thence north twenty-seven degrees twenty-eight minutes west two hundred and two and nine-tenths feet to a stone; thence north twenty-seven degrees eight minutes west two hundred and twenty-six and eight-tenths feet to a stone; thence north sixty-nine degrees forty-five minutes east two hundred and sixty-five and nine-tenths feet to a stone; thence north sixty-eight degrees fifty minutes east three hundred and seventy-eight and eight-tenths feet to a stone; thence south fifty-three degrees fifty minutes east eight hundred and ninety-two feet to a stone; thence south eighty-three degrees twenty minutes east two hundred and ninety-one and four-tenths feet to a stone; thence south twenty-nine degrees twenty minutes west six hundred and fifty-five and seven-tenths feet to a stone; thence south twelve degrees fifty-five minutes west eight hundred and forty-three feet to a stone; thence about west ten feet to a stone; thence south six degrees five minutes west one hundred and thirty-three and four tenths feet to a stone; thence north sixty degrees west thirty-eight feet to a stone; thence north forty-nine degrees west fifty-two and six-tenths feet to a stone; thence north eighty-seven degrees ten minutes west one thousand four hundred and twenty-seven and three-tenths feet to a stone; thence north twelve degrees forty minutes east one hundred and ninety-six and five-tenths feet to a stone; thence south seventy-one degrees west two hundred and thirty-seven and nine-tenths feet to a stone; thence south three degrees fifty-seven minutes west one thousand and eleven and three-tenths feet to the beginning.

Second tract: Beginning at a stone on the south side of Holt Avenue; thence south nine degrees forty-five minutes west one hundred and nine and eight-tenths feet to a stone; thence south eighty-four degrees forty-five minutes east two hundred and forty-nine feet to a stone; thence northeasterly to Holt Avenue; thence with Holt Avenue north eighty-seven degrees ten minutes west to the beginning, on which is located the Joe Spring.

Together with all privileges and appurtenances thereunto belonging.

The aforesaid tracts of land containing in the aggregate one hundred and twenty-five acres, more or less, and being the property of the Guilford Battle-Ground Company, according to a survey by W. B. Trogdon and W. B. Trogdon, junior, made June eight, nineteen hundred and eleven. And the area thus inclosed shall be known as the Guilford Courthouse National Military Park. [39 Stat. L. 996.]

SEC. 2. [Control and direction of establishment — conveyance of lands.]
That the establishment of the Guilford Courthouse National Military Park shall be carried forward under the control and direction of the Secretary of War, who is hereby authorized to receive from the Guilford Battle-Ground Company, a corporation chartered by the State of North Carolina, a deed of conveyance to the United States of all the lands belonging to said corporation, embracing one hundred and twenty-five acres, more or less, and described more particularly in the preceding section. [39 Stat. L. 997.]

SEC. 3. [**Additional lands — acquisition.**] That the Secretary of War is hereby authorized and directed to acquire at such times and in such manner such additional lands adjacent to the Guilford Courthouse National Military Park as may be necessary for the purposes of the park and for its improvement. [39 Stat. L. 997.]

SEC. 4. [**Commissioners — appointment — compensation.**] That the affairs of the Guilford Courthouse National Military Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, one of whom shall be an actual resident of Guilford County, State of North Carolina, one an actual resident of the State of Maryland, and one an actual resident of the State of Delaware. They shall be appointed by the Secretary of War, the actual resident of Guilford County, State of North Carolina, so appointed to serve, unless sooner relieved, for a term of four years. The resident commissioner shall act as chairman and as secretary of the commission. One of the other commissioners so appointed shall serve for a term of three years, and the other for a term of two years, unless sooner relieved. Upon the expiration of the terms of said commissioners the Secretary of War shall, in the manner hereinbefore prescribed, appoint their successors, to serve, unless sooner relieved, for a term of four years each from the date of their respective appointments. The office of said commissioners shall be in the city of Greensboro, North Carolina. The resident commissioner shall receive as compensation \$1,000 per annum, the nonresident commissioners \$100 per annum each, and they shall not be entitled to any other pay or allowances of any kind whatsoever. [39 Stat. L. 997.]

SEC. 5. [**Commissioners — duties.**] That it shall be the duty of the commission named in the preceding section, under the direction of the Secretary of War, to open or repair such roads as may be necessary to the purposes of the park, and to ascertain and mark with historical tablets or otherwise, as the Secretary of War may determine, all lines of battle of the troops engaged in the Battle of Guilford Courthouse and other historical points of interest pertaining to the battle within the park or its vicinity; and the said commission in establishing this military park shall also have authority, under the direction of the Secretary of War, to employ such labor and services and to obtain such supplies and material as may be necessary to the establishment of said park, under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needed regulations for the care of the park. [39 Stat. L. 998.]

SEC. 6. [**Marking battle lines — entry of state troops for purpose — monuments, etc.**] That it shall be lawful for any State that had troops engaged in the battle of Guilford Courthouse to enter upon the lands of the Guilford Courthouse National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them, by monuments, tablets, or otherwise, shall be submitted to and approved by the Secretary

of War; and all such lines, designs, and inscriptions for the same shall first receive the written approval of the Secretary of War. [39 Stat. L. 998.]

SEC. 7. [Offenses — punishment.] That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornamentation of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, brush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree, or trees growing or being upon said park, or hunt within the limits of the park, any person so offending and found guilty thereof before any justice of the peace of the county of Guilford, State of North Carolina, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than \$5 or more than \$50, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the said county of Guilford, State of North Carolina. [39 Stat. L. 998.]

XI. YELLOWSTONE NATIONAL PARK

[SEC. 1.] [Extensions and improvements of roads — plan of making.]

* * * Hereafter road extensions and improvements shall be made in said park under and in harmony with the general plan of roads and improvements to be approved by the Secretary of the Interior. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following an appropriation for the Yellowstone National Park, to which the words "said park" refer.

XII. MISCELLANEOUS PROVISIONS

[SEC. 1.] [National parks generally — revenues — estimates of expenses.] * * * From and after July first, nineteen hundred and eighteen, all revenues of the national parks, except Hot Springs Reservation, Arkansas, shall be covered into the Treasury to the credit of miscellaneous receipts; and the Secretary of the Interior is directed to submit, for the fiscal year nineteen hundred and nineteen and annually thereafter, estimate of the amounts required for the care, maintenance, and development of the said parks. [— Stat. L. —.]

This and the following paragraphs are from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[**Antietam battle field — Superintendent.**] * * * For pay of superintendent of Antietam battle field, said superintendent to perform his duties under the direction of the Quartermaster Corps and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, \$1,500. [*— Stat. L. —.*]

See the note to the preceding paragraph of this section.

Provisions similar to those of this paragraph have appeared in like Appropriation Acts for many years, and its permanency may be questioned.

PUBLIC PRINTING

Act of July 1, 1916, ch. 209, 748.

Sec. 3. Reports and Accompanying Documents — Appropriations — Distribution, 748.

Act of March 3, 1917, ch. 163, 749.

Sec. 1. State, War, and Navy Branch Printing Office Abolished, 749.

Act of May 12, 1917, ch. —, 749.

Contracts with Private Printing Establishments — Payment — Former Act Amended, 749.

Act of Oct. 6, 1917, ch. —, 749.

Sec. 1. Bureau of Engraving and Printing — Bonds, Notes, Checks, etc. — Manner of Printing, 749.

Use of Appropriations for Quartermaster Corps, 750.

Act of July 8, 1918, ch. —, 750.

Employees in Government Printing Office — Increase in Pay — Duration of Increase, 750.

CROSS-REFERENCE

Printing by Weather Bureaus, see WEATHER.

SEC. 3. [Reports and accompanying documents — appropriations — distribution.] That appropriations herein and hereafter made for printing and binding shall not be used for any annual report or the accompanying documents unless the copy therefor is furnished to the Public Printer in the following manner: Copies of the documents accompanying such annual reports on or before the fifteenth day of October of each year; copies of the annual reports on or before the fifteenth day of November of each year; complete revised proofs of the accompanying documents and the annual reports on the tenth and twentieth days of November of each year, respectively; and all of said annual reports and accompanying documents shall be printed, made public, and available for distribution not later than within the first five days after the assembling of each regular session of Congress. The provisions of this section shall not apply to the annual reports of the Smithsonian Institution, the Commissioner of Patents, or the Comptroller of the Currency. [*39 Stat. L. 336.*]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

[SEC. 1.] [State, War and Navy branch printing office abolished.] The Public Printer is directed to remove, within thirty days after the passage of this Act, all printing machinery, material, and so forth, from all rooms in the State, War, and Navy Building now assigned to the Department of State, and the State, War, and Navy branch printing office is hereby abolished. [39 Stat. L. 1083.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Contracts with private printing establishments — payment — former Act amended.] * * * That section eighty-seven of the printing and binding Act, approved January twelfth, eighteen hundred and ninety-five (volume twenty-eight, Revised Statutes, page six hundred and twenty-two), and section two of the act approved June thirtieth, nineteen hundred and six (volume thirty-four, Revised Statutes, page seven hundred and sixty-two), are hereby amended as follows:

“That in time of actual hostilities ~~the~~ Secretary of War may procure from commercial or other printing establishments, by contract or open market purchase, such printing and binding as may be required for the use of the Army and also for the National Guard of the several States and Territories and of the District of Columbia or other military forces while in the military service of the United States or about to be called into said service, payment for such printing and binding to be made from available appropriations.” [— Stat. L. —.]

This is from the Army Appropriation Act of May 12, 1917, ch. —.

For the Act of Jan. 12, 1895, ch. 23, § 87, amended by the text, see 6 Fed. Stat. Ann. 658; 8 Fed. Stat. Ann. (2d ed.) 1040.

For the Act of June 30, 1906, ch. 3914, § 2, amended by the text, see 1909 Supp. Fed. Stat. Ann. 573; 8 Fed. Stat. Ann. (2d ed.) 1049.

[SEC. 1.] [Bureau of Engraving and Printing — bonds, notes, checks, etc.— manner of printing.] * * * The Secretary of the Treasury is hereby authorized, during the continuance of the war with Germany, to have all bonds, notes, checks, or other printed papers, now or hereafter authorized to be executed by the Bureau of Engraving and Printing of the Treasury Department, printed in such manner and by whatever process and on any style of presses that he may consider suitable for the issue of such securities and other papers in the form that will properly safeguard the interests of the Government, except that such presses as are used in printing from intaglio plates shall be operated by plate printers: *Provided*, That in the execution of such work only such part of it shall be transferred from the present method of executing it as will permit of the retention in the service of such permanent plate printers as are now engaged in the execution of such work, or such temporary plate printers similarly employed and who can qualify under civil service regulations for permanent appointment, and all Acts or parts of Acts heretofore enacted relative to the use of power and hand presses in the printing of securities of the Government are hereby suspended and declared to be not in effect during

the continuance of said war, and at the termination of the war such Acts or parts of Acts shall be in effect and force as heretofore. [— *Stat. L.* —.]

This and the following paragraph are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

[Use of appropriations for Quartermaster Corps.] * * * That no part of the appropriations for the Quartermaster Corps shall be expended on printing unless the same shall be done at the Government Printing Office, or by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the purchase of material and hire of the necessary labor for the purpose. [— *Stat. L.* —.]

See the note to the preceding paragraph of this section.

Provisions similar to those of this paragraph have appeared in various Acts for preceding years. An identical provision appeared in the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 *Stat. L.* 631.

[Employees in Government Printing Office—increase in pay—duration of increase.] * * * From and after the passage of this Act the compensation of all printer-linotype operators, printer-monotype-keyboard operators, makers-up, proofreaders, and pressmen employed in the Government Printing Office shall be at the rate of 65 cents per hour for the time actually employed, and that the pay of all compositors, bookbinders, and bookbinder-machine operators employed in the Government Printing Office shall be at the rate of 60 cents per hour for the time actually employed: *Provided*, That employees of the Government Printing Office whose wages are increased by the provisions of this Act shall be paid at the rates provided for herein during the period of the present war and for six months after the proclamation of peace, when the wages paid such employees shall thereafter be at the rates paid at the time of the passage of this Act, unless otherwise provided by law. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of July 8, 1918, ch. —.

PUBLIC PROPERTY, BUILDINGS AND GROUNDS

Act of July 1, 1916, ch. 209, 750.

Sec. 1. Public Buildings — Gas and Electric Lighting Fixtures, 750.

Public Buildings — Furniture, 751.

Assay Offices — Expenses — Appropriation Available, 751.

[**SEC. 1.**] **[Public buildings — gas and electric lighting fixtures.]** * * * That hereafter gas and electric lighting fixtures for the equipment of public buildings and extensions in course of construction under the control of the

Treasury Department, except such gas and electric lighting fixtures as are under contract or may be otherwise provided for by law, shall be paid for from the respective appropriations provided for the construction of such public buildings or extensions. [39 Stat. L. 273.]

This and the two following paragraphs of the text are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

[Public buildings — furniture.] * * * That all furniture now owned by the United States in other public buildings or in buildings rented by the United States shall be used, so far as practicable, whether it corresponds with the present regulation plant for furniture or not. [39 Stat. L. 273.]

See the note to the preceding paragraph of the text.

[Assay offices — expenses — appropriation available.] * * * That hereafter the annual appropriations for the care, maintenance, and repair of Federal buildings and their mechanical and vault and safe equipments, shall be available in the same manner and to the same extent for assay offices assigned quarters in Federal buildings under the authority contained in chapter five hundred and forty-six of the Act approved July first, eighteen hundred and ninety-eight. (Thirtieth Statutes, page six hundred and fourteen), as such appropriations are available for other branches of the Government service quartered in such buildings. [39 Stat. L. 273.]

See the note to the second preceding paragraph of the text.

For the Act of July 1, 1898, ch. 546, § 1, mentioned in the text, see 6 Fed. Stat. Ann. 716; 8 Fed. Stat. Ann. (2d ed.) 1125.

QUARANTINE

See AGRICULTURE; ANIMALS; HEALTH AND QUARANTINE

RAILROADS

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16. Act as Emergency Legislation — Effect on Future Policy of Government, 766.

I. GOVERNMENT-AIDED RAILROADS

[SEC. 1.] [Land-grant railroads — compensation for transportation of troops.] * * * Land-grant railroads organized under the Act of July twenty-eighth, eighteen hundred and sixty-six, chapter three hundred, shall receive the same compensation for transportation during the existing war emergency of property and troops of the United States as may be paid to land-grant railroads, organized under the land-grant Act of March third, eighteen hundred and sixty-three, and the Act of July twenty-seventh, eighteen hundred and sixty-six, chapter two hundred and seventy-eight, for such transportation during said emergency: *Provided*, That this paragraph shall not be construed as changing in any other way or for any other period of time the rights and duties of the land-grant railroads first above mentioned. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

The Acts mentioned in the text are the Act of July 28, 1866, ch. 300, 14 Stat. L. 338; the Act of March 3, 1863, ch. 98, 12 Stat. L. 772, and the Act of July 27, 1866, ch. 278, 14 Stat. L. 292. These Acts, being of local nature only, are not included in either edition of Fed. Stat. Ann.

[SEC. 1.] [Transportation of troops, munitions and supplies.] * * * For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *And provided further*, That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not

come within the scope of the deductions provided for in the land-grant Acts. [*— Stat. L. —.*]

This is from the Deficiencies Appropriation Act of March 28, 1918, ch. —

II. SAFETY APPLIANCES AND EQUIPMENT.

An Act To amend an Act entitled “An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto,” approved February seventeenth, nineteen hundred and eleven.

[*Act of June 26, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Inspectors — salaries — Locomotive Boiler Act of 1911 amended.]** That the Act entitled “An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto,” approved February seventeenth, nineteen hundred and eleven, as amended, be, and is hereby, amended as follows:

“Amend section three so as to provide that the salary of the chief inspector shall be \$5,000 per year; the salary of each assistant inspector shall be \$4,000 per year.

“Amend section four so as to provide that the salary of each district inspector shall be \$3,000 per year.” [*— Stat. L. —.*]

For the Locomotive Boiler Act of Feb. 17, 1911, ch. 103, §§ 3 and 4, amended by the text, see 1912 Supp. Fed. Stat. Ann. 339, 340; 8 Fed. Stat. Ann. (2d ed.) 1201.

SEC. 2. **[Effect of Act.]** Nothing herein contained shall be construed as amending, altering, or repealing any of the other provisions of said sections. [*— Stat. L. —.*]

III. HOURS OF SERVICE OF EMPLOYEES

An Act To establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes.

[*Act of Sept. 3, 5, 1916, ch. 436, 39 Stat. L. 721.*]

[SEC. 1.] **[Eight-hour day — establishment for employees of carriers engaged in interstate, etc., commerce.]** That beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the Act

of February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States: *Provided*, That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants. [39 Stat. L. 721.]

This is the so-called "Adamson Act." It was approved on Sept. 3 and again on Sept. 5, because the 3d fell on Sunday, and some doubt existed as to the validity of an Act approved on that day.

For the Interstate Commerce Act of Feb. 4, 1887, ch. 104, mentioned in this section, see 3 Fed. Stat. Ann. 809, 4 Fed. Stat. Ann. (2d ed.) 331.

The constitutionality of this Act was sustained in *Wilson v. Neu*, 243 U. S. 332, 61 U. S. (L. ed.) 755.

SEC. 2. [Commission appointed to observe effect of eight-hour standard workday — report — appropriation.] That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions affecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; that each member of the commission created under the provisions of this Act shall receive such compensation as may be fixed by the President. That the sum of \$25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, per diem, traveling expenses of members and employees, and rent, furniture, office fixtures and supplies, books, salaries, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury. [39 Stat. L. 722.]

SEC. 3. [Compensation pending report of commission.] That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this Act for a standard eight-hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight

hours such employees shall be paid at a rate not less than the pro rata rate for such standard eight-hour workday. [39 Stat. L. 722.]

SEC. 4. [Violation of Act—punishment.] That any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 and not more than \$1,000, or imprisoned not to exceed one year, or both. [39 Stat. L. 722.]

An Act To amend section three of an Act entitled “An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,” approved March fourth, nineteen hundred and seven.

[Act of May 4, 1916, ch. 109, 39 Stat. L. 61.]

[SEC. 1.] [Hours of service of employees—limitation—penalties—prosecutions—defenses—former Act amended.] That section three of an Act entitled “An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,” approved March fourth, nineteen hundred and seven, be, and the same is hereby, amended so as to read as follows:

“SEC. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section hereof shall be liable to a penalty of not less than \$100 nor more than \$500 for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed; and it shall be the duty of such district attorney to bring such suit upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorney information of any such violations as may come to its knowledge. In all prosecutions under this Act the common carrier shall be deemed to have knowledge of all acts of all its officers and agents: *Provided*, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident of the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further*, That the provisions of this Act shall not apply to the crews of wrecking or relief trains.” [39 Stat. L. 61.]

For the Act of March 4, 1907, ch. 2939, § 3, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 583; 8 Fed. Stat. Ann. (2d ed.) 1406.

SEC. 2. [Effect on prior or pending suits.] That nothing in this Act shall affect, or be held to affect, any suit that may be instituted for recovery of penalty for violation of the Act hereby amended occurring prior to the approval of this Act, or any suit for such penalty or growing out of alleged violation of the Act hereby amended which may be pending in any court at the time of the approval of this Act. [39 Stat. L. 61.]

IV. FEDERAL CONTROL

An Act To provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes.

[*Act of March 21, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Railroads — federal control — compensation — payment — income — excess of income over compensation — computation — taxes — maintenance.] That the President, having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate commerce commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen.

That any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. In the computation of such income, debits and credits arising from the accounts called in the monthly reports to the Interstate Commerce Commission equipment rents and joint facility rents shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called inter-urbans, as are at the time of the agreement not under Federal control, shall be excluded. If any lines were acquired by, leased to, or consolidated with such railroad or system between July first, nineteen hundred and fourteen, and December thirty-first, nineteen hundred and seventeen, both inclusive, and separate operating returns to the Interstate Commerce Commission were not made for such lines after such acquisition, lease, or consolidation, there shall (before the average is computed) be added to the total railway operating income of such railroad or system for the three years ended June thirtieth, nineteen hundred and seventeen, the total railway operating income of the lines so acquired, leased, or consolidated, for the period beginning July first, nineteen hundred and fourteen, and ending on the date of such acquisition, lease, or consolidation, or on December thirty-first, nineteen hundred and seventeen, whichever is the earlier. The average annual railway operating income shall be ascertained by the Interstate Commerce Commission and certified by it to the President. Its certificate shall, for the purpose of such agreement, be taken as conclusive of the amount of such average annual railway operating income.

Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just

compensation; that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof, either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal control; that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals, and depreciation of the property, for the creation of any reserves or reserve funds found necessary in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges, be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States; in making such accounting and adjustments, due consideration shall be given to the amounts expended or reserved by each carrier for maintenance, repairs, renewals, and depreciation during the three years ended June thirtieth, nineteen hundred and seventeen, to the condition of the property at the beginning and at the end of the Federal control and to any other pertinent facts and circumstances.

The President is further authorized in such agreement to make all other reasonable provisions, not inconsistent with the provisions of this Act or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen, because of nonoperation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control," as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act: *Provided, however,* That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both.

The agreement shall also provide that the carrier shall accept all the terms and conditions of this Act and any regulation or order made by or through the President under authority of this Act or of that portion of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation. [— *Stat. L.* —.]

For the Act of Oct. 3, 1917, ch. —, mentioned in the text, see INTERNAL REVENUE, *ante*, p. 336.

For the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

Jurisdiction of negligence cases against railroad.—In *Muir v. Louisville, etc., R. Co.*, 247 Fed. 888, (1918 D. C. W. D. Ky.) it was held that an action against a railroad company, for an accident occurring December 20, 1917, and therefore before the President's proclamation of December 26, 1917, taking control of the railroad under this Act, should be remanded from a federal court, to which it had been removed from a state court, back to the state court, as the federal court had no jurisdiction. The contention of the railroad company was that the

action arose under the constitution and laws of the United States.

Garnishment proceedings will not lie against a railroad company under government control, by reason of the fact that the President's proclamation of December 26, 1917, taking over the railroads expressly prevented levies by lien or final process. *Dooley v. Penn. R. Co.*, (1918 D. C. Minn.) 250 Fed. 142. See also *Louisville, etc., R. Co. v. Steel*, (Ky. 1918) 202 S. W. 878.

SEC. 2. [Compensation in absence of agreement — payment — excess of profits over compensation.] That if no such agreement is made, or pending the execution of an agreement, the President may nevertheless pay to any carrier while under Federal control an annual amount, payable in reasonable installments, not exceeding ninety per centum of the estimated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. The acceptance of any benefits under this section shall constitute an acceptance by the carrier of all the provisions of this Act and shall obligate the carrier to pay to the United States, with interest at the rate of six per centum per annum from a date or dates fixed in proceedings under section three, the amount by which the sums received under this section exceed the sum due in such proceedings. [— *Stat. L.* —.]

SEC. 3. [Adjustment of claims for compensation — boards for adjustment — powers, duties, etc.— agreements.] That all claims for just compensation not adjusted (as provided in section one) shall, on the application of the President or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. Such boards of referees are hereby authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. In case of disobedience to a subpoena the board may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or association, issue an order requiring appearance before the board, or the production of documentary evidence if so ordered, or the giving of evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such cases may be heard separately or together or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States; shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation, calculated on an annual basis and otherwise in such form as to be convenient and available for the making of such agreement as is authorized in section one. The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and may include therein provisions similar to those authorized under section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way. [— *Stat. L.* —.]

SEC. 4. [Increase of compensation.] That the just compensation that may be determined as hereinbefore provided by agreement or that may be adjudicated by the Court of Claims, shall be increased by an amount reckoned at a reasonable rate per centum to be fixed by the President upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property of such carrier made by such carrier with the approval of or by order of the President while such property is under Federal control. [— *Stat. L.* —.]

SEC. 5. [Dividends.] That no carrier while under Federal control shall, without the prior approval of the President, declare or pay any dividend

in excess of its regular rate of dividends during the three years ended June thirtieth, nineteen hundred and seventeen: *Provided, however,* That such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine. [— *Stat. L.* —.]

SEC. 6. [Appropriation — expenditure — improvement of equipment, etc.— adjustment of losses — purchase of transportation facilities.] That the sum of \$500,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which, together with any funds available from any operating income of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and so far as necessary the amount of just compensation, and to provide terminals, motive power, cars, and other necessary equipment, such terminals, motive power, cars, and equipment to be used and accounted for as the President may direct and to be disposed of as Congress may hereafter by law provide.

The President may also make or order any carrier to make any additions, betterments, or road extensions, and to provide terminals, motive power, cars and other equipment necessary or desirable for war purposes or in the public interest on or in connection with the property of any carrier. He may from said revolving fund advance to such carrier all or any part of the expense of such additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other necessary equipment so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such additions, betterments, or road extensions so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the utilization and operation of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland, canal, and coastwise waterways, and may in the operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest. [— *Stat. L.* —.]

SEC. 7. [Bonds, etc.— issue — approval of President — purchase and sale by United States — annual reports.] That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this Act, purchase for the United States all or any part of such

securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. Any securities so purchased shall be held by the Secretary of the Treasury, who shall, under the direction of the President, represent the United States in all matters in connection therewith in the same manner as a private holder thereof. The President shall each year as soon as practicable after January first, cause a detailed report to be submitted to the Congress of all receipts and expenditures made under this section and section six during the preceding calendar year. [— *Stat. L.* —.]

SEC. 8. [Authority of President — agencies.] That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient. But no such official or employee of the United States shall receive any additional compensation for such services except as now permitted by law. [— *Stat. L.* —.]

SEC. 9. [Effect on former Act — application of Act.] That the provisions of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, shall remain in force and effect except as expressly modified and restricted by this Act; and the President, in addition to the powers conferred by this Act, shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred. The provisions of this Act shall also apply to any carriers to which Federal control may be hereafter extended. [— *Stat. L.* —.]

For the Act of Aug. 29, 1918, ch. 418, § 1, mentioned in the text, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 10. [Carriers under Federal control — liabilities — suits by or against — new rates, charges, classifications, etc.] That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a Federal court any action heretofore or hereafter instituted by or against it, which action was not so transferable prior to the Federal control of such carrier; and any action which has heretofore

been so transferred because of such Federal control or of any Act of Congress or official order or proclamation relating thereto shall upon motion of either party be retransferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control.

That during the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under Federal control, and may consider all the facts and circumstances existing at the time of the making of the same. In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

After full hearing the commission may make such findings and orders as are authorized by the Act to regulate commerce as amended, and said findings and orders shall be enforced as provided in said Act: *Provided, however,* That when the President shall find and certify to the Interstate Commerce Commission that in order to defray the expenses of Federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation, or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make. [— *Stat. L.* —.]

First paragraph construed.—The effect of the first paragraph of this section is to entirely suspend the right of issuing and levying executions, attachments, or other like process against the property of common carriers under federal control, during the continuance of such control; but it does not prevent a litigant from bringing his action against the latter in any court of competent jurisdiction, or such court from granting him such relief in the form of a judgment or otherwise, short of the coercive payment or satis-

faction of such judgment by the levy of an execution or other like process upon or against any property of the carrier, as the litigant might, but for the passage of the act, under the laws of the state of his residence, have been entitled to. In other words, he may, notwithstanding the act, bring his action and obtain judgment against the carrier; but he cannot enforce against the latter the satisfaction of the judgment, when obtained, by execution or similar process. *Louisville, etc., R. Co. v. Steel*, 202 S. W. 878.

SEC. 11. [Violation of Act—interference with use, etc., of property, etc.—violation of orders, etc.—penalty—embezzlement of funds, etc.—prosecutions.] That every person or corporation, whether carrier or ship-

per, or **any** receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this Act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this Act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than \$5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this Act, or any order entered in pursuance hereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession, use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents, and employees engaged in said railroad and transportation service, while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this Act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts. [— *Stat. L.* —.]

SEC. 12. [Income derived from operation — disposition — disbursements — taxes.] That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the Treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof shall be in the same manner and form as before Federal control. Disbursements therefrom shall, without further appropriation, be made in the same manner as before Federal control and for such purposes as under the Interstate Commerce Commission classification of accounts in force on December twenty-seventh, nineteen hundred and seventeen, are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President may direct, except that taxes under Titles One and Two of the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October third, nineteen hundred and seventeen, or any Act in addition thereto or in amendment thereof, shall be paid by the carrier out of its own funds. If Federal control begins or ends during the tax year for which any taxes so chargeable to railway tax accruals are assessed, the taxes for such year shall be apportioned to the date of the beginning or ending of such Federal control, and disbursements shall be made only for that portion of such taxes as is due for the part of such tax year which falls within the period of Federal control.

At such periods as the President may direct, the books shall be closed and the balance of revenues over disbursements shall be covered into the

Treasury of the United States to the credit of the revolving fund created by this Act. If such revenues are insufficient to meet such disbursements, the deficit shall be paid out of such revolving fund in such manner as the President may direct. [— *Stat. L.* —.]

For the Act of Oct. 3, 1917, ch. —, Titles I and II, mentioned in the text, see INTERNAL REVENUE, *ante*, pp. 336, 341.

SEC. 13. [Determination of pending cases.] That all pending cases in the courts of the United States affecting railroads or other transportation systems brought under the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended and supplemented, including the commodities clause, so called, or under the Act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, and amendments thereto, shall proceed to final determination as soon as may be, as if the United States had not assumed control of transportation systems; but in any such case the court having jurisdiction may, upon the application of the United States, stay execution of final judgment or decree until such time as it shall deem proper. [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, mentioned in the text, see 3 Fed. Stat. Ann. 809, and for said Act as subsequently amended, including the commodities clause, see 4 Fed. Stat. Ann. (2d ed.) 337.

For the Sherman Act of July 2, 1890, ch. 647, mentioned in the text, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 642.

SEC. 14. [Duration of Federal control.] That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided, however,* That the President may, prior to July first, nineteen hundred and eighteen, relinquish control of all or any part of any railroad or system of transportation, further Federal control of which the President shall deem not needful or desirable; and the President may at any time during the period of Federal control agree with the owners thereof to relinquish all or any part of any railroad or system of transportation. The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable. No right to compensation shall accrue to such owners from and after the date of relinquishment for the property so relinquished. [— *Stat. L.* —.]

SEC. 15. [Effect on existing laws or powers of States.] That nothing in this Act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds. [— *Stat. L.* —.]

SEC. 16. [Act as emergency legislation — effect on future policy of government.] That this Act is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof. [— *Stat. L.* —.]

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See WATERS

RED CROSS

See CHARITIES; NATIONAL BANKS

REGISTRY AND RECORDING OF VESSELS

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See *PENAL LAWS*

I. NAVIGABLE WATERS

SEC. 7. [Regulation for navigable waters or channel improvements — former Act amended.] That section four of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, as amended by section eleven of the river and harbor Act of June thirteenth, nineteen hundred and two, be, and is hereby, amended so as to read as follows:

“ SEC. 4. That it shall be the duty of the Secretary of War to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.” [— *Stat. L.* —.]

The foregoing section 7 and the following sections 8, 15–17 are from the River and Harbor Appropriation Act of Aug. 8, 1917, ch. —.

For the Act of Aug. 18, 1894, ch. 299, § 4, as amended by the Act of June 13, 1902, ch. 1079, § 11, see 6 Fed. Stat. Ann. 792; 9 Fed. Stat. Ann. (2d ed.) 18.

SEC. 8. [Regulation for use and navigation of waters endangered by gunfire, mines, etc.] That, in the interest of the national defense and for the better protection of life and property on said waters, the Secretary of War is hereby authorized and empowered to prescribe such regulations as he may deem best for the use and navigation of any portion of areas of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by Coast Artillery fire in target practice or otherwise, or by the proving operations of the Government ordnance proving ground at Sandy Hook, New Jersey, or at any Government ordnance proving ground that may be established elsewhere on or near such waters, and of any portion or area of said waters occupied by submarine mines, mine fields, submarine cables, or other

material and accessories pertaining to seacoast fortifications; and the said Secretary of War shall have like power to regulate the transportation of explosives upon any of said waters.

That to enforce the regulations prescribed pursuant to this section the Secretary of War may detail any public vessel in the service of the War Department, or, upon the request of the Secretary of War, the head of any other department may enforce, and the head of any such department is hereby authorized to enforce, such regulations by means of any public vessel of such department. [— *Stat. L.* —.]

See the note to the preceding section 7 of this Act.

SEC. 15. [Mosquito Creek, South Carolina — declared nonnavigable.] That Mosquito Creek, in Colleton County, South Carolina, be, and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

SEC. 16. [Bayou Meto, Arkansas — declared nonnavigable.] That Bayou Meto, in the State of Arkansas, be, and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

SEC. 17. [Saint Marys River, Ohio and Indiana — declared nonnavigable.] That Saint Marys River, Ohio and Indiana, be, and the same hereby is, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

II. IMPROVEMENTS

[**SEC. 1.] [Printing — payment — former Act repealed.]** * * * Section thirteen of the river and harbor appropriation Act approved July twenty-fifth, nineteen hundred and twelve, which authorizes the payment for printing of matter relating to river and harbor works from river and harbor appropriations, is repealed, and hereafter such printing shall be done and paid for out of regular annual appropriations for printing and binding for the War Department. [39 *Stat. L.* 330.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of July 25, 1912, ch. 253, § 13, repealed by the text, see 1914 Supp. Fed. Stat. Ann. 369; 9 Fed. Stat. Ann. (2d ed.) 37.

SEC. 3. [Government dredging plant — construction or use.] That in all cases where the authorized project for a work of river or harbor improvement provides for the construction or use of Government dredging plant,

the Secretary of War may, in his discretion, have the work done by contract if reasonable prices can be obtained. [— *Stat. L.* —.]

This section and the following sections 4, 5, 9 and 13 are from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

SEC. 4. [New government works — surveys — supplemental reports and estimates — Cape Cod Canal.] That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or joint resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress: *And provided further*, That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until funds for the commencement of the proposed work shall have been actually appropriated by law.

* * * The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following-named localities, and a sufficient sum to pay the cost thereof may be allotted from the amount provided in this section: * * *

Waterway connecting Buzzards Bay and Cape Cod Bay, Massachusetts: The Secretary of War, the Secretary of the Navy, and the Secretary of Commerce are hereby authorized to examine and appraise the value of the works and franchises of the Cape Cod Canal, Massachusetts, connecting Buzzards and Cape Cod Bays, with reference to the advisability of the purchase of said canal by the United States and the construction over the route of the said canal of a free waterway, with or without a guard lock, and having a depth and capacity sufficient to accommodate the navigation interests that are affected thereby. This investigation shall be conducted under the direction of the Secretary of War and the supervision of the Chief of Engineers in the usual manner provided by law for making preliminary examinations and surveys except that the Secretary of War shall call upon the Secretary of the Navy and the Secretary of Commerce for such data and evidence as these Secretaries may wish to have incorporated in the report of survey, and further, that the final report of the investigation, with its conclusions upon probable cost and commercial advantages, and military and naval uses of the said canal, shall be submitted to the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce for their action before it is transmitted to Congress.

If the said Secretaries are all in favor of the acquisition of the said canal, the Secretary of War is hereby further authorized to enter into negotiations for its purchase, including all property, franchises, and appurtenances used or acquired for use in connection therewith or appertaining thereto; and he is further authorized, if in the judgment of the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce, that the price for such canal is reasonable and satisfactory, to make contracts for the purchase of the same, at the option of the United States, subject to future ratification and appropriation by the Congress; or, in the event of the inability of the Secretary of War to make a satisfactory contract for the

voluntary purchase of said Cape Cod Canal and its appurtenances, he is hereby authorized and directed, through the Attorney General, to institute and carry to completion proceedings for the condemnation of said canal and its appurtenances, the acceptance of the award in said proceedings to be subject to the future ratification and appropriation by Congress. Such condemnation proceedings shall be instituted and conducted in, and jurisdiction of said proceedings is hereby given to, the district court of the United States for the district of Massachusetts, substantially as provided in "An Act to authorize condemnation of land for sites for public buildings, and for other purposes," approved August first, eighteen hundred and eighty-eight; and the sum of \$5,000 is hereby appropriated to pay the necessary costs thereof and expenses in connection therewith. The Secretary of War is further authorized and directed to report the proceedings hereunder to Congress. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

For the Act of Aug. 1, 1888, ch. 728, mentioned in the text, see 6 Fed. Stat. Ann. 700; 8 Fed. Stat. Ann. (2d ed.) 1111.

SEC. 5. [Authorization to states of Minnesota, North and South Dakota — improvement of navigation — controlling floods.] That Congress hereby consents that the States of Minnesota, North Dakota, and South Dakota, or any two of them, may enter into any agreement or agreements with each other to aid in improving navigation and to prevent and control floods on boundary waters of said States and the waters tributary thereto. And said States, or any two of them, may agree with each other upon any project or projects for the purpose of making such improvements, and upon the amount of money to be contributed by each to carry out such projects. The Secretary of War is authorized and directed to make a survey of any project proposed, as aforesaid, by said States, or any two of them, to determine the feasibility and practicability thereof and the expenses of carrying the same into effect and what share of such expenses should be borne by the respective States, local interests, or by the National Government. If the Secretary of War approves any such projects, he may authorize the States to make such improvements at their own expense, but under his supervision. That the sum of \$25,000, or so much thereof as may be necessary, is hereby appropriated, out of any funds in the Treasury of the United States not otherwise appropriated, for the purpose of enabling the Secretary of War to make the surveys and estimates herein contemplated. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

SEC. 9. [Land or easement needed in work of harbor improvement — procurement — condemnation proceedings.] That whenever any State, or any reclamation, flood control or drainage district, or other public agency created by any State, shall undertake to secure any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the

name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney General of the United States to institute and conduct such proceedings upon the request of the Secretary of War: *Provided*, That all expenses of said proceedings and any award that may be made thereunder shall be paid by such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to secure which payment the Secretary of War may require such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

SEC. 13. [Rents from government plants—how disposed of.] That amounts hereafter paid by private parties or other agencies for rental of plant owned by the Government in connection with the prosecution of river and harbor works shall be deposited in each case to the credit of the appropriation to which the plant belongs. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

An Act Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

[*Act of July 18, 1918, ch. —, —Stat. L. —.*]

SEC. 4. [Improvements—private contracts.] That no part of the funds herein or hereafter appropriated for works of river and harbor improvement shall be used to pay for any work done by private contract if the contract price is more than twenty-five per centum in excess of the estimated cost of doing the work by Government plant: *Provided*, That in estimating the cost of doing the work by Government plant, including the cost of labor and materials, there shall also be taken into account proper charges for depreciation of plant and all supervising and overhead expenses and interest on the capital invested in the Government plant, but the rate of interest shall not exceed the maximum prevailing rate being paid by the United States on current issues of bonds or other evidences of indebtedness. [— *Stat. L.* —.]

The sections preceding this section are omitted as temporary only.

SEC. 5. [Condemnation proceedings—possession—compensation—security.] That whenever the Secretary of War, in pursuance of authority conferred on him by law, causes proceedings to be instituted in the name of the United States for the acquirement by condemnation of any lands, easements, or rights of way needed for a work of river and harbor improvement duly authorized by Congress, the United States, upon the filing of the petition in any such proceedings, shall have the right to take immediate

possession of said lands, easements, or rights of way, to the extent of the interest to be acquired, and proceed with such public works thereon as have been authorized by Congress: *Provided*, That certain and adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, either by previous appropriation by the United States or by the deposit of moneys or other form of security in such amount and form as shall be approved by the court in which such proceedings shall be instituted. The respondent or respondents may move at any time in the court to increase or change the amounts or securities, and the court shall make such order as shall be just in the premises and as shall adequately protect the respondents. In every case the proceedings in condemnation shall be diligently prosecuted on the part of the United States in order that such compensation may be promptly ascertained and paid. [— *Stat. L.* —.]

SEC. 6. [**Condemnation proceedings — compensation — benefits to land not taken.**] That in all cases where private property shall be taken by the United States for the public use in connection with any improvement of rivers, harbors, canals, or waterways of the United States, and in all condemnation proceedings by the United States to acquire lands or easements for such improvements, where a part only of any such parcel, lot, or tract of land shall be taken, the jury or other tribunal awarding the just compensation or assessing the damages to the owner, whether for the value of the part taken or for any injury to the part not taken, shall take into consideration by way of reducing the amount of compensation or damages any special and direct benefits to the remainder arising from the improvement, and shall render their award or verdict accordingly. [— *Stat. L.* —.]

SEC. 7. [**Report of Chief of Engineers.**] That hereafter the Chief of Engineers, United States Army, shall indicate in his annual reports the character of the terminal and transfer facilities existing on every harbor or waterway under maintenance or improvement by the United States, and state whether they are considered adequate for existing commerce. He shall also submit one or more special reports on this subject, as soon as possible, including, among other things, the following:

(a) A brief description of such water terminals, including location and the suitability of such terminals to the existing traffic conditions, and whether such terminals are publicly or privately owned, and the terms and conditions under which they may be subjected to public use.

(b) Whether such water terminals are connected by a belt or spur line of railroad with all the railroads serving the same territory or municipality, and whether such connecting railroad is owned by the public and the conditions upon which the same may be used, and also whether there is an interchange of traffic between the water carriers and the railroad or railroads as to such traffic which is carried partly by rail and partly by water to its destination, and also whether improved and adequate highways have been constructed connecting such water terminal with the other lines of railways.

(c) If no water terminals have been constructed by the municipality or other existing public agency there shall be included in his report an

expression of opinion in general terms as to the necessity, number, and appropriate location of such a terminal or terminals.

(d) An investigation of the general subject of water terminals, with descriptions and general plans of terminals of appropriate types and construction for the harbors and waterways of the United States suitable for various commercial purposes and adapted to the varying conditions of tides, floods, and other physical characteristics. [— *Stat. L.* —.]

SEC. 8. [Improvements — uncompleted contracts — modifications and readjustments.] That if the Secretary of War shall determine that any of the contracts for work of river and harbor improvements entered into but not completed prior to April sixth, nineteen hundred and seventeen, the date of the entrance of the United States into the war with Germany, have become inequitable and unjust on account of increased costs of materials and labor and the other unforeseen conditions arising out of the war, he is hereby authorized, in his discretion and with the consent of the contractors, to modify and readjust the terms of said contracts in such manner as he may deem equitable and just: *Provided*, That such modifications and readjustments shall apply only to work under said contracts remaining to be done hereafter and shall not include any relief for work performed heretofore under said contracts, and any such sum as may be necessary to provide for the increased cost of the contracts due to said modifications and readjustments, not exceeding the sum of \$2,000,000, is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided further*, That as a condition of any such contract being so modified, the Secretary of War shall have the right, at the end of any fiscal year, until the contract is completed, to make such further modifications as in his judgment shall be advantageous to the United States and just to the contractor. [— *Stat. L.* —.]

SEC. 9. [Expenses of field work or travel on official business — how met — per diem.] That hereafter when the expenses of persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty are chargeable to appropriations of the Engineer Department, a per diem of not exceeding \$4 may be allowed in lieu of subsistence when not otherwise fixed by law. [— *Stat. L.* —.]

III. MISSISSIPPI RIVER COMMISSION

[SEC. 1.] [Mississippi River Commission — jurisdiction — extension — funds for improving river — expenditure.] The jurisdiction of the Mississippi River Commission is hereby extended so as to include that part of the Arkansas River between its mouth and the intersection thereof with the division line between Lincoln and Jefferson Counties, and any funds which are herein or may be hereafter appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees and bank revetment, may be expended within the limits of said extended jurisdiction under the direction of the Secretary of War, in accordance with the plans,

specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, and upon like terms and conditions for levees and bank revetment upon any part of the Mississippi River now under the jurisdiction of said commission, and in such manner as will best promote and accomplish the purposes for which commission was created, in so far as the territory hereby added to its said jurisdiction may be involved.

Any funds which are herein, or may hereafter be, appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended, under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for levees upon any part of said river between Head of Passes and Rock Island, Illinois, in such manner as, in their opinion, shall best improve navigation and promote the interest of commerce at all stages of the river. [39 Stat. L. 402.]

This is from the Rivers and Harbors Appropriation Act of July 27, 1916, ch. 260.

IV. WATERWAYS COMMISSION

SEC. 18. [Waterways Commission — creation — members — duties.]

That a commission, to be known as the Waterways Commission, consisting of seven members to be appointed by the President of the United States, at least one of whom shall be chosen from the active or retired list of the Engineers Corps of the Army, at least one of whom shall be an expert hydraulic engineer from civil life, and the remaining five of whom may each be selected either from civil life or the public service, is hereby created and authorized, under such rules and regulations as the President may prescribe, and subject to the approval of the heads of the several executive departments concerned, to bring into coordination and cooperation the engineering, scientific, and constructive services, bureaus, boards, and commissions of the several governmental departments of the United States and commissions created by Congress that relate to study, development, or control of waterways and water resources and subjects related thereto, or to the development and regulation of interstate and foreign commerce, with a view to uniting such services in investigating, with respect to all watersheds in the United States, questions relating to the development, improvement, regulation, and control of navigation as a part of interstate and foreign commerce, including therein the related questions of irrigation, drainage, forestry, arid and swamp land reclamation, clarification of streams, regulation of flow, control of floods, utilization of water power, prevention of soil erosion and waste, storage, and conservation of water for agricultural, industrial, municipal, and domestic uses, cooperation of railways and waterways, and promotion of terminal and transfer facilities, to secure the necessary data, and to formulate and report to Congress, as early as practicable, a comprehensive plan or plans for the development of waterways and the water resources of the United States for the purposes of navigation and for every useful purpose, and recommendations for the modification or discontinuance of any project herein or heretofore

adopted. Any member appointed from the retired list shall receive the same pay and allowances as he would if on the active list, and no member selected from the public service shall receive additional compensation for services on said commission, and members selected from civil life shall receive compensation of \$7,500 per annum.

In all matters done, or to be done, under this section relating to any of the subjects, investigations, or questions to be considered hereunder and in formulating plans, and in the preparation of a report or reports, as herein provided, consideration shall be given to all matters which are to be undertaken, either independently by the United States or by cooperation between the United States and the several States, political subdivisions thereof, municipalities, communities, corporations, and individuals within the jurisdiction, powers, and rights of each, respectively, and with a view to assigning to the United States such portion of such development, promotion, regulation, and control as may be undertaken by the United States, and to the States, political subdivisions thereof, municipalities, communities, corporations, and individuals such portions as belong to their respective jurisdictions, rights, and interests.

The commission is authorized to employ or retain, and fix the compensation for the services of such engineers, transportation experts, experts in water development and utilization, and constructors of eminence as it may deem necessary to make such investigations and to carry out the purposes of this section. And in order to defray the expenses made necessary by the provisions of this section there is hereby authorized to be appropriated such sums as Congress may hereafter determine, and the sum of \$100,000 is hereby appropriated, available until expended, to be paid out upon warrants drawn on the Secretary of the Treasury by the chairman of said commission.

The commission shall have power to make every expenditure requisite for and incident to its authorized work, and to employ in the District of Columbia and in the field such clerical, legal, engineering, artistic, and expert services as it may deem advisable, including the payment of per diem in lieu of subsistence for employees engaged in field work or traveling on official business, rent of offices in the District of Columbia and in the field, and the purchase of books, maps, and office equipment.

Nothing herein contained shall be construed to delay, prevent, or interfere with the completion of any survey, investigation, project, or work herein or heretofore or hereafter adopted or authorized upon or for the improvement of any of the rivers or harbors of the United States or with legislative action upon reports heretofore or hereafter presented. [*— Stat. L. —.*]

This is from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

V. PANAMA CANAL AND CANAL ZONE

[SEC. 1.] [Canal Zone — expenditures from sale of bonds.] * * *

That all expenditures from the appropriations heretofore herein, and hereafter made for the construction of the Panama Canal, including any portion of such appropriations which may be used for the construction of dry docks,

repair shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances, for the purpose of providing coal and other materials, labor, repairs, and supplies, for the construction of office buildings, and quarters, and other necessary buildings, exclusive of fortifications, colliers, dock six at Cristobal, and reboiling of steamships "Ancon" and "Cristobal," which steamships shall not be transferred to the Secretary of the Navy, as provided in the Act of May twenty-seventh, nineteen hundred and eight, and exclusive of the fair value of the American legation building in Panama, as approved by the Secretary of War and Secretary of State, which building is authorized to be transferred without charge to the jurisdiction of the Secretary of State, and exclusive of the amount used for operating and maintaining the canal, and exclusive of the amount expended for sanitation and civil government after January first, nineteen hundred and fifteen, may be paid from or reimbursed to the Treasury of the United States out of the proceeds of the sale of bonds authorized in section eight of the said Act approved June twenty-eighth, nineteen hundred and two, and section thirty-nine of the tariff Act approved August fifth, nineteen hundred and nine. [39 Stat. L. 334.]

The foregoing provisions of section 1 and the following section 2 are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of June 28, 1902, ch. 1302, § 8, mentioned in the text, see 6 Fed. Stat. Ann. 838; 8 Fed. Stat. Ann. (2d ed.) 416.

For the Tariff Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

The Sundry Civil Appropriation Act of May 27, 1908, ch. 200, § 1, 35 Stat. L. 385, mentioned in the text, provided for the purchase of two steamships, which should be transferred to the Secretary of the Navy when no longer needed in the construction of the Panama Canal.

[SEC. 2.] **[Panama Canal — Joint Land Commission — jurisdiction.]**

That the Joint Land Commission established under article fifteen of the treaty between the United States and the Republic of Panama, proclaimed February twenty-sixth, nineteen hundred and four, shall not have jurisdiction to adjudicate or settle any claim originating under any lease or contract for occupancy heretofore or hereafter made by the Panama Railroad Company of lands or property owned by said Panama Railroad Company in the Canal Zone, and no part of the moneys appropriated by this or any other Act shall be used to pay such claims. [39 Stat. L. 336.]

See the note to the preceding section 1 of this Act.

Article XV of the treaty mentioned in the text is given in 33 Stat. L. 2238.

An Act Extending certain privileges of canal employees to other officials on the Canal Zone and authorizing the President to make rules and regulations affecting health, sanitation, quarantine, taxation, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including provision as to certain fees, money orders, and interest deposits.

[Act of Aug. 21, 1916, ch. 371, 39 Stat. L. 527.]

[SEC. 1.] **Canal Zone — health and quarantine.]** That, until otherwise provided by Congress, the President is authorized to make rules and regula-

tions in matters of sanitation, health, and quarantine for the Canal Zone or to modify or change existing rules and regulations and those hereafter made from time to time. Violations of any quarantine regulations provided for herein shall be punished by fine not to exceed \$500 or by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment, in the court's discretion; and a violation of any sanitary regulations hereunder shall be punished by a fine not to exceed \$25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. Each day such violation may continue shall constitute a separate offense. [39 Stat. L. 527.]

SEC. 2. [Taxes — collection — amount.] That, until otherwise provided by Congress, the President is hereby authorized to make and from time to time change rules and regulations for levying, assessing, and collecting ad valorem, excise, license, and franchise taxes in the Canal Zone, or to modify or change existing rules or regulations for that purpose. Ad valorem taxes imposed shall not exceed one per centum of the value of the property, nor shall franchise or excise taxes exceed two per centum of gross earnings. [39 Stat. L. 528.]

SEC. 3. [Roads and highways — use.] That, until otherwise provided by Congress, it shall be lawful for the President to make, publish, and enforce all rules and regulations for the use of the public roads and highways in the Canal Zone, and also for regulating, licensing, and taxing the use and operation of all self-propelled vehicles using the public highways, including speed limit, signals, tags, license fees, and all detailed regulations which may be from time to time deemed necessary in the exercise of the authority hereby conferred. The taxes on automobiles may be graded according to the value or the power of the machine, and such rules and regulations as now exist may be changed by such order from time to time, and any that may be hereafter made be changed from time to time. The President may make mutual agreements with the Republic of Panama touching the reciprocal use of the highways of the Canal Zone and the Republic of Panama by self-propelled vehicles touching taxes and license fees, and any other matter of regulation to establish comity for the convenience of the residents of the two jurisdictions. [39 Stat. L. 528.]

SEC. 4. [Breaches of peace, etc.— police power.] That it shall be unlawful to commit any breach of the peace or engage in or permit any disorderly, indecent, or immoral conduct in the Canal Zone. The President is authorized to enforce this provision by making rules and regulations to assert and exercise the police power in the Canal Zone, or for any portion or division thereof, and he may amend or change any such regulation now existing or hereafter made. [39 Stat. L. 528.]

SEC. 5. [Violations of rules and regulations — punishment.] That any person who commits any act or who carries on any business, trade, or occupation in the Canal Zone without complying with the rules and regulations established by the President for the levying, assessing, and collecting

of taxes, or who violates any rules or regulations for the use of the public roads and highways, or who violates any rules and regulations touching the licensing, taxes, operation, and use of self-propelled vehicles, or who violates any of the police regulations authorized hereunder, shall be punished by fine not to exceed \$25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. [39 Stat. L. 528.]

SEC. 6. [Deposit money orders — interest.] That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding two per centum per annum. [39 Stat. L. 528.]

SEC. 7. [Interest from money-order funds — use.] That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service. [39 Stat. L. 528.]

SEC. 8. [Fees of customs officers.] That whenever a customs officer of the Canal Zone shall certify an invoice, landing certificate, or other similar document, or shall register a marine note of protest, or shall perform any notarial services, he shall be authorized to collect a fee equivalent to the fee prescribed by the United States consular regulations for the same act or service when performed by consular officials. [39 Stat. L. 528.]

SEC. 9. [Laws relating to seamen.] The laws relating to seamen of vessels of the United States on foreign voyages shall apply to seamen of all vessels of the United States at the Panama Canal Zone, whether such vessels be registered or enrolled and licensed, and the powers in respect of such seamen of such vessels bestowed by law upon consular officers of the United States in foreign ports and upon shipping commissioners in ports of the United States are hereby bestowed upon the shipping commissioner and deputy shipping commissioners on the Panama Canal Zone. [39 Stat. L. 529.]

SEC. 10. [Rules affecting right of persons to enter and remain in Canal Zone — authority to make — violations.] The President is hereby authorized to make rules and regulations, and to alter or amend the same from time to time, touching the right of any person to enter or remain upon or pass over any part of the Canal Zone; for the detention of any person entering the Canal Zone in violation of such rules and regulations, and return of such person to the country whence he or she came, on the vessel bringing such person to the Canal Zone, or any other vessel belonging to the same owner or interest, and at the expense of such owner or interest; and in addition to the punishment prescribed by this section for violation of any such rules and regulations, the authorities of the Canal Zone may

withhold the clearance of such vessel from any port in the Canal Zone until any fine imposed and the cost of maintenance of such person are paid. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding a year, or both in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly. [39 Stat. L. 529.]

SEC. 11. [Repeal of conflicting laws.] That all laws, orders, or ordinances in conflict with this Act are hereby repealed. [39 Stat. L. 529.]

[SEC. 1.] [Panama Canal — tolls — refund.] * * * There is appropriated, out of any money hereafter received as tolls, before such money is covered into the Treasury as miscellaneous receipts, amounts necessary to refund to the parties entitled thereto amounts which heretofore or may hereafter be erroneously received as tolls and covered into the Treasury as miscellaneous receipts. [— Stat. L. —.]

This is from the Civil Sundry Appropriation Act of June 12, 1917, ch. —.

VI. MISCELLANEOUS

[SEC. 1.] * * * [Chesapeake and Delaware Canal — purchase by government.] The Secretary of War is hereby authorized to enter into negotiations for the purchase of the existing Chesapeake and Delaware Canal, and all the property, rights of property, franchises, and appurtenances used or acquired for use in connection therewith or appertaining thereto; and he is further authorized, if in his judgment the price is reasonable and satisfactory, to make a contract for the purchase of the same, subject to future ratification and appropriation by Congress. In the event of the inability of the Secretary of War to make a satisfactory contract for the voluntary purchase of said canal and its appurtenances, he is hereby authorized and directed through the Attorney General to institute and to carry to completion proceedings for the condemnation of the said canal and its appurtenances, the acceptance of the award in said proceedings to be subject to future ratification and appropriation by Congress. Such condemnation proceedings shall be instituted and conducted in, and jurisdiction of said proceedings is hereby given to, the District Court of the United States for the District of Delaware substantially as provided in

“An Act to authorize condemnation of land for sites for public buildings, and for other purposes,” approved August first, eighteen hundred and eighty-eight. [— *Stat. L.* —.]

The foregoing part of section 1 and the following sections 3-5, 9 and 13 are from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

For the Act of Aug. 1, 1888, ch. 728, mentioned in the text, see 6 Fed. Stat. Ann. 700; 8 Fed. Stat. Ann. (2d ed.) 1111, ..

ROADS

See POSTAL SERVICE.

RURAL CREDITS

See AGRICULTURE.

ST. ELIZABETH'S HOSPITAL

See HOSPITALS AND ASYLUMS.

SALVAGE

Act of July 1, 1918, ch. —, 781.

Salvage by Naval Vessels — Compensation, 781.

[Salvage by naval vessels — compensation.] * * * That hereafter the Secretary of the Navy is authorized to cause vessels under his control adapted to the purpose, to afford salvage service to public or private vessels in distress: *Provided*, That when such salvage service is rendered by a vessel specially equipped for the purpose or by a tug, the Secretary of the Navy may determine and collect reasonable compensation therefor. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

SEALS

Counterfeiting or use of Government Seal to Defraud, see CRIMINAL LAW.

SEAMEN

Act of June 12, 1916, ch. 141, 782.

Life-Saving Appliances — Life Buoys — Former Act Amended, 782.

CROSS-REFERENCE

Costs in Suits by or against Seamen, see COSTS.

An Act To amend section fourteen of the seamen's Act of March fourth, nineteen hundred and fifteen.

[Act of June 12, 1916, ch. 141, 39 Stat. L. 224.]

[Life-saving appliances — life buoys — former Act amended.] That section fourteen of the seamen's Act of March fourth, nineteen hundred and fifteen, be amended by striking out subdivisions third and fourth of subsection headed "Life jackets and life buoys," regarding the number of life buoys with which steamers navigating the ocean, or any lake, bay, or sound of the United States shall be equipped, and inserting, in lieu thereof, the following:

"Third. The minimum number of life buoys with which vessels are to be provided is fixed as follows:

"Vessels under one hundred feet in length, minimum number of buoys, two; vessels one hundred feet and less than two hundred feet in length, minimum number of buoys, four, of which two shall be luminous; vessels two hundred feet and less than three hundred feet in length, minimum number of buoys, six, of which two shall be luminous; vessels three hundred feet and less than four hundred feet in length, minimum number of buoys, twelve, of which four shall be luminous; vessels four hundred feet and less than six hundred feet in length, minimum number of buoys, eighteen, of which nine shall be luminous; vessels six hundred feet and less than eight hundred feet in length, minimum number of buoys, twenty-four, of which twelve shall be luminous; vessels eight hundred feet and over in length, minimum number of buoys, thirty, of which fifteen shall be luminous.

"Fourth. All the buoys shall be fitted with beackets securely seized. Where two buoys only are carried, one shall be fitted with a life line at least fifteen fathoms in length, and where more than two buoys are carried, at least one buoy on each side shall be fitted with a life line of at least fifteen fathoms in length. The lights shall be efficient self-igniting lights which cannot be extinguished in water and they shall be kept near the buoys to which they belong, with the necessary means of attachment." *[39 Stat. L. 224.]*

For the Act of March 4, 1915, ch. 153, § 14, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 234; 9 Fed. Stat. Ann. (2d ed.) 479.

SEARCH WARRANTS

See CRIMINAL LAW.

SEIZURE OF VESSELS

See SHIPPING AND NAVIGATION.

SHIPPING AND NAVIGATION

Act of Sept. 7, 1916, ch. 451, 785.

Sec. 1. United States Shipping Board Act — Definitions — "Common Carrier by Water in Foreign Commerce" — "Common Carrier by Water in Interstate Commerce" — "Common Carrier by Water" — "Other Persons Subject to this Act" — "Person" — "Vessel" — "Documented under the Laws of the United States," 785.

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2. Numbers by Whom Awarded — Recording Numbers, 809.

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CROSS-REFERENCES

Housing Shipyard Employees, see LABOR.

See also *EMINENT DOMAIN; EXECUTIVE DEPARTMENTS; IMPORTS AND EXPORTS; PENAL LAWS; SALVAGE; STEAM VESSELS; TRADING WITH THE ENEMY.*

An Act To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes.

[Act of Sept. 7, 1916, ch. 451, 39 Stat. L. 728.]

[SEC. 1.] [United States Shipping Board Act — definitions — “common carrier by water in foreign commerce” — “common carrier by water in interstate commerce” — “common carrier by water” — “other persons subject to this Act” — “person” — “vessel” — “documented under the laws of the United States.”] That when used in this Act:

The term “common carrier by water in foreign commerce” means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such “common carrier by water in foreign commerce.”

The term “common carrier by water in interstate commerce” means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term “common carrier by water” means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means registered, enrolled, or licensed under the laws of the United States. [39 Stat. L. 728 as amended by — Stat. L. —.]

The last two paragraphs of this section were added by the Act of July 15, 1918, ch. —, § 1.

SEC. 2. [Corporation, etc., as citizen — applicability of Act to receivers and trustees — controlling interest in corporation — alien ownership.]

That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States. [39 Stat. L. 729 as amended by — Stat. L. —.]

This section was amended to read as given in the text by the Act of July 15, 1918, ch. —, § 2, the amendment consisting in the addition of the last paragraph relating to the controlling interest in corporations.

SEC. 3. [United States Shipping Board created — membership — official seal — rules and regulations.] That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and to a fair representation of the geographical divisions of the country. Not more than three of the commissioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this Act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business. [39 Stat. L. 729.]

SEC. 4. [Salaries of members and employees — expenses — offices — auditing accounts.] That each member of the board shall receive a salary of \$7,500 per annum. The board shall appoint a secretary, at a salary of \$5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the Congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

The expenses of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board.

Until otherwise provided by law the board may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board. [39 Stat. L. 729.]

SEC. 5. [Authority of board to construct, etc., vessels.] That the board, with the approval of the President, is authorized to have constructed and

equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided*, That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel —

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag or [of] a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purpose specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel. [39 Stat. L. 730.]

SEC. 6. [Transfer of vessels to board by President.] That the President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business. [39 Stat. L. 730.]

SEC. 7. [Authority of board to charter, etc., vessels to citizens.] That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred. [39 Stat. L. 730.]

SEC. 8. [Sale of vessels unsuited to purposes of Act.] That when any vessel purchased or constructed by or transferred to the board as herein provided, and owned by the United States, becomes, in the opinion of the board, unfit for the purposes of this Act, it shall be appraised and sold at public or private competitive sale after due advertisement free from the conditions and restrictions of this Act. [39 Stat. L. 730.]

SEC. 9. [Registry, etc., of vessels — transfers, sales, etc.—penalty.] That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the

United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

No vessel documented under the laws of the United States or owned by any person a citizen of the United States or by a corporation organized under the laws of the United States or of any State, Territory, District, or possession thereof, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to or placed under a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred to or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment for not more than five years, or both. [39 Stat. L. 730, as amended by — Stat. L. —.]

This section was amended to read as given in the text by the Act of July 15, 1918, ch. —, § 3. As originally enacted it was as follows:

"SEC. 9. That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation to which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States.

"Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

"When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

"Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment of not more than five years, or both such fine and imprisonment."

"Employed solely as a merchant vessel," as used in the second paragraph of this section, is applicable to a vessel chartered to the French Government by the United States Shipping Board Emergency

Fleet Corporation, and carrying a cargo of food for that government, and such vessel is subject to libel if it collides with a British vessel on the high seas. *The Florence H.*, 248 Fed. 1012.

SEC. 10. [Authority of President to take possession of vessels purchased, etc., from board for naval, etc., purposes — compensation.] That the President, upon giving to the person interested such reasonable notice in writing as in his judgment the circumstances permit, may take possession, absolutely or temporarily, for any naval or military purpose of any vessel purchased, leased, or chartered from the board: *Provided*, That if, in the judgment of the President, an emergency exists requiring such action he may take possession of any such vessel without notice.

Thereafter, upon ascertainment by agreement or otherwise, the United States shall pay the person interested the fair actual value based upon normal conditions at the time of taking of the interest of such person in every vessel taken absolutely, or if taken for a limited period, the fair charter value under normal conditions for such period. In case of disagreement as to such fair value it shall be determined by appraisers, one to be appointed by the board, one by the person interested, and a third by the two so appointed. The finding of such appraisers shall be final and binding upon both parties. [*39 Stat. L. 731.*]

SEC. 11. [Formation of corporations by board for purchase, etc., of merchant vessels — conditions precedent to operation.] That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed \$50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided*, That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and

shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten. [39 Stat. L. 731.]

SEC. 12. [Investigations by board as to cost of building vessels, etc.—reports.] That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board. [39 Stat. L. 731.]

SEC. 13. [**Limit on liability incurred — bonds.**] That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of \$50,000,000 and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed \$50,000,000: *Provided*, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven. [*39 Stat. L. 732.*]

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

For the Act of Feb. 4, 1910, ch. 25, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 309; 8 Fed. Stat. Ann. (2d ed.) 418.

For the Act of March 2, 1911, ch. 195, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 350; 8 Fed. Stat. Ann. (2d ed.) 418.

SEC. 14. [**Common carriers by water — combinations and discriminations prohibited — penalty.**] That no common carrier by water shall directly or indirectly —

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term “deferred rebate” in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term “fighting ship” in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any

shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense. [39 Stat. L. 733.]

SEC. 15. [Agreements between carriers, etc.—approval by board—penalties.] That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes." and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action. [39 Stat. L. 733.]

For the Act of July 2, 1890, ch. 647, mentioned in the text, see 7 Fed. Stat. Ann. 336, and for said Acts and amendments and Acts supplementary thereto see 9 Fed. Stat. Ann. (2d ed.) 644.

For the Act of July 27, 1894, ch. 349, §§ 73–77, mentioned in the text, see 7 Fed. Stat. Ann. 346, and for said Act and amendments and Acts supplementary thereto see 9 Fed. Stat. Ann. (2d ed.) 642.

SEC. 16. [Preference or advantages by common carriers, etc., prohibited — insurance.] That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly —

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act. [39 Stat. L. 734.]

SEC. 17. [Discriminatory rates, etc.—receiving, etc., property — reasonable regulations.] That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice. [39 Stat. L. 734.]

SEC. 18. [Reasonable rates, etc.—tariffs.] That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance,

form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice. [39 Stat. L. 735.]

SEC. 19. [Reduction of rates to injure competitor — subsequent increase regulated.] That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon changed conditions other than the elimination of said competition. [39 Stat. L. 735.]

SEC. 20. [Disclosure of information — prohibition.] That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. [39 Stat. L. 735.]

SEC. 21. [Reports, etc., filed by carrier with board — failure to file — falsification, destruction, etc. — penalty.] That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment. [39 Stat. L. 736.]

SEC. 22. [Violations of Act — complaints — investigations by board.] That any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act. [39 Stat. L. 736.]

SEC. 23. [Orders of board.] Orders of the board relating to any violation of this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the board other than for the payment of money made under this Act shall continue in force for such time, not exceeding two years, as shall be prescribed therein by the board, unless suspended, modified, or set aside by the board or any court of competent jurisdiction. [39 Stat. L. 736.]

SEC. 24. [Reports of board as to investigations resulting in a hearing — use as evidence.] That the board shall enter of record a written report of every investigation made under this Act in which a hearing has been held, stating its conclusions, decisions, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, Districts, and possessions thereof. [39 Stat. L. 736.]

SEC. 25. [Authority of board to reverse, etc., orders.] That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the board, operate as a stay of such order. [39 Stat. L. 736.]

SEC. 26. [Investigations of action of foreign government affecting United States shipping.] The board shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign Government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign Government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers of goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the board to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges then the President shall advise Congress as to the facts and his conclusions by special message, if deemed important in the public interest, in order that proper action may be taken thereon. [39 Stat. L. 737.]

SEC. 27. [Subpoenas — fees and mileage.] That for the purpose of investigating alleged violations of this Act, the board may by subpoena

compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpœnas may be signed by any commissioner, and oaths or affirmations may be administered, witnesses examined, and evidence received by any commissioner or examiner, or, under the direction of the board, by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the board and witnesses shall, unless employees of the board, be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpoena shall, on application by the board, be enforced as are orders of the board other than for the payment of money. [39 Stat. L. 737.]

SEC. 28. **[Witnesses.]** That no person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the board or of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. [39 Stat. L. 737.]

SEC. 29. **[Orders not for payment of money — enforcement — injunction.]** That in case of violation of any order of the board, other than an order for the payment of money, the board, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise. [39 Stat. L. 737.]

SEC. 30. **[Orders for payment of money — enforcement.]** That in case of violation of any order of the board for the payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the board in the premises.

In the district court the findings and order of the board shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

All parties in whose favor the board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from the date of the order. [39 Stat. L. 737.]

SEC. 31. [Suits in United States courts to enforce, etc., orders of board — venue and procedure.] That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties. [39 Stat. L. 738.]

SEC. 32. [Violation of provisions of Act — punishment.] That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed \$5,000. [39 Stat. L. 738.]

SEC. 33. [Construction of Act — Interstate Commerce Commission.] That this Act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this Act be construed to apply to intrastate commerce. [39 Stat. L. 738.]

SEC. 34. Invalidity of part of Act — effect as to remainder.] That if any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby. [39 Stat. L. 738.]

SEC. 35. [Appropriation for defraying expenses incurred.] That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of \$100,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the board, including the payment of salaries herein authorized. [39 Stat. L. 738.]

SEC. 36. [Refusal of clearance by Secretary of Treasury — grounds.] The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or

domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable. [*39 Stat. L. 738.*]

See the following section of this Act and the note thereto.

SEC. 37. [War or national emergency — condition precedent to foreign registry or ownership — violation of provisions — forfeiture — other penalties.] That when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the board:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver or in any manner transfer to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(d) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(e) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

Any vessel, shipyard, dry dock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased,

chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subdivision (e), shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successor or assigns, after the tender of such vessel, shipyard, dry dock, ship building or ship repairing plant or facilities, or interest therein, or of such stocks, bonds or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States. [— *Stat. L.* —.]

The foregoing section 37 and the following sections 38-40 were added to this Act by the Act of July 15, 1918, ch. —, entitled "An Act To amend the Act approved September seventh, nineteen hundred and sixteen, entitled 'An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water in the foreign and interstate commerce of the United States; and for other purposes,'" which provided in section 4 thereof "That said Act is hereby amended by adding at the end thereof eight sections, as follows," etc.

Sections 1, 2 and 3 of said amendatory Act amended sections 1, 2 and 9, respectively, of this Act.

SEC. 38. [Prosecution of forfeitures.] That all forfeitures incurred under the provisions of this Act may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to the collection of duties. [— *Stat. L.* —.]

See the note to the preceding section 37 of this Act.

SEC. 39. [Evidence in forfeiture proceedings.] That in any action or proceeding under the provisions of this Act to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, this page.

SEC. 40. [Transfer of interests in vessels — formalities — violations.] That whenever any bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part thereof, or interest therein, is presented to any collector of the customs to be recorded, the vendee, mortgagee, or transferee, shall file therewith a written declaration in such form as the board may by regulation prescribe, setting forth the facts relating to his citizenship, and such other facts as the board requires, showing that the transaction does not involve a violation of any of the provisions of section nine

or thirty-seven. Unless the board, before such presentation, has failed to prescribe such form, no such bill of sale, mortgage, hypothecation, or conveyance shall be valid against any person whatsoever until such declaration has been filed. Any declaration filed by or in behalf of a corporation shall be signed by the president, secretary, or treasurer thereof.

Whoever knowingly makes any false statement of a material fact in any such declaration shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 41. [Approval of shipping board — how accorded — conditions — false statements.] That whenever by said section nine or thirty-seven the approval of the board is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the board prescribes. Whenever the approval of the board is accorded upon any condition a statement of such condition shall be entered upon its records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the board, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this Act the approval of the board is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the board, or to any member thereof, or to any officer, attorney, or agent thereof, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment for not more than five years, or both. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 42. [Character of vessel as documented — period of continuance.] That any vessel registered, enrolled, or licensed under the laws of the United States shall be deemed to continue to be documented under the laws of the United States within the meaning of subdivision (b) of section thirty-seven, until such registry, enrollment, or license is surrendered with the approval of the board, the provisions of any other Act of Congress to the contrary notwithstanding. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 43. [Ending of war or national emergency — how evidenced.] That the fact that a war or emergency has ended shall, for the purposes of this Act, be evidenced by a proclamation of the President. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 44. [Short title of Act.] That this Act may be cited as Shipping Act, 1916. [— Stat. L. —.]

See the note to section 37 of this Act, *supra*, p. 800.

Joint Resolution Authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

[Joint Res. of May 12, 1917, No. —, — Stat. L. —.]

[SEC. 1.] [Foreign vessels in American waters owned in enemy country — seizure by President.] That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise. [— Stat. L. —.]

SEC. 2. [Board of survey — appointment — duties.] That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation. [— Stat. L. —.]

[SEC. 1.] [Emergency shipping fund — acquisition of ships or material or plants for production thereof — acquisition of transportation facilities — transportation of shipyard employees — compliance with orders — compensation — definitions — authority of President, expiration — expenditures — limit.] * * * The President is hereby authorized and empowered, within the limits of the amounts herein authorized —

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material, or take possession, lease or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or occupation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

(f) To take possession of, lease or assume control of, any street railroad, interurban railroad, or part thereof wherever operated, and all cars, appurtenances, and franchises or parts thereof commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards or plants engaged or that may hereafter be engaged in the construction of ships or equipment therefor for the United States.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner

provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word "person" as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

The word "ship" shall include any boat, vessel, or submarine and the parts thereof.

The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.

The word "plant" shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard or dockyard and discharging terminal or other facilities connected therewith.

The words "United States" shall include all lands and waters subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

The cost of purchasing, requisitioning, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction and the expediting of construction of ships thus under construction shall not exceed the sum of \$250,000,000, exclusive of the cost of ships turned over to the Army and Navy, the expenditure of which is hereby authorized, and in executing the authority granted by this Act for such purpose the President shall not expend or obligate the United States to expend more than the said sum; and there is hereby appropriated for said purpose, \$150,000,000: *Provided*, That this appropriation shall be reimbursed from available funds under the War and Navy Departments for vessels turned over for the exclusive use of those departments or either of them.

The cost of construction of ships authorized herein shall not exceed the sum of \$500,000,000, the expenditure of which is hereby authorized, and in executing the authority granted herein for such purpose the President shall not expend or obligate the United States to expend more than said sum; and there is hereby appropriated for said purpose, \$250,000,000.

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the Army or Navy, and for every expenditure incident thereto, \$5,000,000. [*— Stat. L. — as amended by — Stat. L. —.*]

The foregoing paragraph and that following are from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

For Judicial Code, § 24, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 139; 4 Fed. Stat. Ann. (2d ed.) 838.

For Judicial Code, § 145, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

Subdivision "(b)" of this section was amended to read as given in the text by an Act of April 22, 1918, ch. —, § 2, the amendment consisting of the addition after the word "materials" of the provisions relating to street railroads, etc.

Subdivision "(f)" was added to this section by the Act of April 22, 1918, ch. —, § 1. See section 3 of said Act, *infra*, p. 809.

[Vessels transporting fuel — purchase by president.] * * * That when, in the opinion of the President, the prices asked for the charter of vessels for the transportation of fuel are excessive, he is authorized to purchase vessels suitable for the purpose and, if money is not otherwise available, to pay for them from the appropriation "Fuel and transportation." [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

TITLE II

VESSELS IN PORTS OF THE UNITED STATES

SECTION 1. [National emergency — seizure of vessels by government.] Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

Within the territory and waters of the Canal Zone the Governor of the Panama Canal, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury. [— *Stat. L.* —.]

This Title II, consisting of the foregoing section 1 and the following sections 2-4, and the following Title III are from the Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in *CRIMINAL LAW*, *ante*, p. 133, contains provisions applicable alike to both Title II and Title III, and should be read in connection therewith.

SEC. 2. [Interference with seizure — punishment.] If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given by the Secretary of the Treasury or the Governor of the Panama Canal under

the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture, to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be fined not more than \$10,000, or imprisoned not more than two years, or both. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

SEC. 3. [Destruction or injury of vessel by owner, etc.—making improper use of vessels — forfeiture.] It shall be unlawful for the owner or master or any other person in charge or command of any private vessel, foreign or domestic, or for any member of the crew or other person, within the territorial waters of the United States, willfully to cause or permit the destruction or injury of such vessel or knowingly to permit said vessel to be used as a place of resort for any person conspiring with another or preparing to commit any offense against the United States, or in violation of the treaties of the United States or of the obligations of the United States under the law of nations, or to defraud the United States, or knowingly to permit such vessels to be used in violation of the rights and obligations of the United States under the law of nations; and in case such vessel shall be so used, with the knowledge of the owner or master or other person in charge or command thereof, the vessel together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and whoever violates this section shall be fined not more than \$10,000 or imprisoned not more than two years, or both. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 806.

SEC. 4. [Enforcement of purpose of title.] The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purpose of this title. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 806.

TITLE III

INJURING VESSELS ENGAGED IN FOREIGN COMMERCE

SECTION 1. [Nature of injury — punishment of persons committing.] Whoever shall set fire to any vessel of foreign registry, or any vessel of American registry entitled to engage in commerce with foreign nations, or to any vessel of the United States as defined in section three hundred and ten of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," or to the cargo of the same, or shall tamper with the motive power or instrumentalities of navigation of such vessel, or shall place bombs or explosives in or upon such vessel, or shall do any other act to or upon such vessel while within the jurisdiction of the United States, or, if such vessel is of American

registry, while she is on the high sea, with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom; or whoever shall attempt or conspire to do any such acts with such intent, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. [— *Stat. L.* —.]

See the notes to section 1, Title II, *supra*, p. 806.

For Penal Laws, § 310, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 490; 7 Fed. Stat. Ann. (2d ed.) 964.

An Act Giving the United States Shipping Board power to suspend present provisions of law and permit vessels of foreign registry and foreign-built vessels admitted to American registry under the Act of August eighteenth, nineteen hundred and fourteen, to engage in the coastwise trade during the present war and for a period of one hundred and twenty days thereafter, except the coastwise trade with Alaska.

[*Act of Oct. 6, 1917, ch. —, — Stat. L.* —.]

[**American registry of foreign built ships.**] That during the present war with Germany and for a period of one hundred and twenty days thereafter the United States Shipping Board may, if in its judgment the interests of the United States require, suspend the present provisions of law and permit vessels of foreign registry, and foreign-built vessels admitted to American registry under the Act of August eighteenth, nineteen hundred and fourteen, to engage in the coastwise trade of the United States: *Provided*, That no such vessel shall engage in the coastwise trade except upon a permit issued by the United States Shipping Board, which permit shall limit or define the scope of the trade and the time of such employment: *Provided further*, That in issuing permits the board shall give preference to vessels of foreign registry owned, leased, or chartered by citizens of the United States or corporations thereof: *And provided further*, That the provisions of this Act shall not apply to the coastwise trade with Alaska or between Alaskan ports. [— *Stat. L.* —.]

For the Act of Aug. 18, 1914, ch. 256, mentioned in the title of this Act, see 1916 Supp. Fed. Stat. Ann. 252; 9 Fed. Stat. Ann. (2d ed.) 295.

SEC. 3. [Compensation for property acquired through emergency shipping fund.] That upon taking possession of such property, or leasing or assuming control thereof, just compensation shall be made therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States of America to recover such further sums as added to seventy-five per centum will make up such amount as will be just compensation therefor, in the

manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him through the several departments of the Government, and through such agency or agencies as he shall determine from time to time. [— *Stat. L.* —.]

This is the last section of the Act of April 22, 1918, ch. —, entitled "An Act To amend the emergency shipping fund provisions of the urgent deficiency appropriation Act approved June fifteenth, nineteen hundred and seventeen, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes."

Sections 1 and 2 of this Act amended the Act of June 15, 1917, ch. —, § 1, and are incorporated therein, *supra*, p. 803.

For Judicial Code, § 24, see 1912 Supp. Fed. Stat. Ann. p. 138; 4 Fed. Stat. Ann. (2d ed.) 838.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. p. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

An Act To require numbering and recording of undocumented vessels.

[*Act of June 7, 1918, ch. —, — Stat. L.* —.]

[SEC. 1.] [**Undocumented vessels — numbering.**] That every undocumented vessel, operated in whole or in part by machinery, owned in the United States and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. Such numbers shall be not less in size than three inches and painted or attached to each bow of the vessel in such manner and color as to be distinctly visible and legible. [— *Stat. L.* —.]

SEC. 2. [**Numbers by whom awarded — recording numbers.**] That the said numbers, on application of the owner or master, shall be awarded by the collector of customs of the district in which the vessel is owned and a record thereof kept in the custom-house of the district in which the owner or managing owner resides. No numbers not so awarded shall be carried on the bows of such vessel. [— *Stat. L.* —.]

SEC. 3. [**Destruction or abandonment of vessels numbered — change of ownership — notice — numbering anew.**] That notice of destruction or abandonment of such vessels or change in their ownership shall be furnished within ten days by the owners to the collectors of customs of the districts where such numbers were awarded. Such vessel sold into another customs district may be numbered anew in the latter district. [— *Stat. L.* —.]

SEC. 4. [**Violation of Act — penalties — jurisdiction.**] That the penalty for violation of any provision of this Act shall be \$10, for which the vessel shall be liable and may be seized and proceeded against in the district court of the United States in any district in which such vessel may be found. Such penalty on application may be mitigated or remitted by the Secretary of Commerce. [— *Stat. L.* —.]

SEC. 5. [Regulation by Secretary of Commerce.] That the Secretary of Commerce shall make such regulations as may be necessary to secure proper execution of this Act by collectors of customs and other officers of the Government. [— *Stat. L.* —.]

SEC. 6. [Act when effective.] That this Act shall take effect six months after its passage. [— *Stat. L.* —.]

[Hydrographic office — detail of naval officers.] * * * That the Secretary of the Navy is authorized to detail such naval officers as may be necessary to the Hydrographic Office. [— *Stat. L.* —.]

This and the paragraph which follows are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Bureau of Navigation — clerical force and office expenses.] * * * That the clerical force and office expenses provided for the Division of Naval Militia Affairs shall be transferred to the Bureau of Navigation. [— *Stat. L.* —.]

See note to the preceding paragraph of the text.

SOLDIERS' AND SAILORS' CIVIL RELIEF

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An Act To extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war.

[*Act of March 8, 1918, ch. —, — Stat. L. —.*]

ARTICLE I.

GENERAL PROVISIONS.

SEC. 100. [Soldiers' and Sailors' Civil Relief Act — suspension of legal proceedings and transactions.] That for the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, protection is hereby extended to persons in military service of the United States in order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war. [*— Stat. L. —.*]

SEC. 101. [Definitions.] (1) That the term “persons in military service,” as used in this Act, shall include the following persons and no others: All officers and enlisted men of the Regular Army, the Regular Army Reserve, the Officers' Reserve Corps, and the Enlisted Reserve Corps; all officers and enlisted men of the National Guard and National Guard Reserve recognized by the Militia Bureau of the War Department; all forces raised under the Act entitled “An Act to authorize the President to increase temporarily the Military Establishment of the United States,” approved May eighteenth, nineteen hundred and seventeen; all officers and enlisted men of the Navy, the Marine Corps, and the Coast Guard; all officers and enlisted men of the Naval Militia, Naval Reserve force, Marine Corps Reserve, and National Naval Volunteers recognized by the Navy Department; all officers of the Public Health Service detailed by the Secretary of the Treasury for duty either with the Army or the Navy; and any of the personnel of the Lighthouse Service and of the Coast and Geodetic Survey transferred by the President to the service and jurisdiction of the War Department or of the Navy Department; members of the Nurse Corps;

Army field clerks; field clerks, Quartermaster Corps; civilian clerks and employees on duty with the military forces detailed for service abroad in accordance with provisions of existing law; and members of any other body who have heretofore or may hereafter become a part of the military or naval forces of the United States. The term "military service," as used in this definition, shall signify active service in any branch of service heretofore mentioned or referred to, but reserves and persons on the retired list shall not be included in the term "persons in military service" until ordered to active service. The term "active service" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service," as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death which in active service, but in no case later than the date when this Act ceases to be in force.

(3) The term "person," as used in this Act, with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court" as used in this Act shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

(5) The term "termination of the war" as used in this Act shall mean the termination of the present war by the treaty of peace as proclaimed by the President. [— *Stat. L.* —.]

SEC. 102. [Territory affected — Courts — procedure for enforcing Act.]

(1) That the provisions of this Act shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court. [— *Stat. L.* —.]

SEC. 103. [Sureties, guarantors, indorsers, etc.] Whenever pursuant to any of the provisions of this Act the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court; likewise be granted to sureties, guarantors, indorsers, and others subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, indorser, or other person liable upon the contract or liability for the enforcement of which the judgment or decree was entered. [— *Stat. L.* —.]

ARTICLE II.

GENERAL RELIEF.

SEC. 200. (1) **[Default judgments — conditions precedent to entry — affidavit as to military service.]** That in any action or proceeding commenced in any court if there shall be a default of an appearance by the defendant the plaintiff before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require as a condition before judgment is entered that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act. [— *Stat. L.* —.]

(2) **[Penalty for false affidavit.]** Any person who shall make or use an affidavit required under this section knowing it to be false shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. [— *Stat. L.* —.]

(3) **[Attorneys to represent persons in military service.]** In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts. [— *Stat. L.* —.]

(4) **[Opening judgments — bona fide purchasers.]** If any judgment shall be rendered in any action or proceeding governed by this section

against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. [— *Stat. L.* —.]

SEC. 201. [Staying actions or proceedings — when permitted.] That at any stage thereof any action or proceeding commenced in any court by or against a person in military service during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service. [— *Stat. L.* —.]

SEC. 202. [Staying action on contract — effect.] That when an action for compliance with the terms of any contract is stayed pursuant to this Act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired. [— *Stat. L.* —.]

SEC. 203. [Staying execution of judgments, etc.—attachments and garnishments.] That in any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service:

(1) Stay the execution of any judgment or order entered against such person, as provided in this Act, and

(2) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment, as provided in this Act. [— *Stat. L.* —.]

SEC. 204. **[Period of stay of actions, etc.—codefendants.]** That any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may nevertheless by leave of court proceed against the others. [— *Stat. L.* —.]

SEC. 205. **[Computing period for bringing actions — inclusive of period of military service.]** That the period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service. [— *Stat. L.* —.]

ARTICLE III.

RENT, INSTALLMENT CONTRACTS, MORTGAGES.

SEC 302. (1) **[Eviction or distress — leave of court.]** That no eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed \$50 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession. [— *Stat. L.* —.]

(2) **[Stay of proceedings.]** On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act, or it may make such other order as may be just. [— *Stat. L.* —.]

(3) **[Violation of provisions of section — penalty.]** Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. [— *Stat. L.* —.]

(4) **[Rent — satisfaction — allotment of pay.]** The Secretary of War or the Secretary of the Navy, as the case may be, is hereby empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person. [— *Stat. L.* —.]

301. (1) **[Installments or deposits for property sold or leased — nonpayment and forfeitures — rescission of contracts.]** That no person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction. [— *Stat. L.* —.]

(1a) **[Violation of provisions of section — penalty.]** Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) hereof shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. [— *Stat. L.* —.]

(2) **[Repayment of prior installments or deposits.]** Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interest of all parties. [— *Stat. L.* —.]

SEC. 302. (1) **[Secured obligations.]** That the provisions of this section shall apply only to obligations originating prior to the date of approval of this Act and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him. [— *Stat. L.* —.]

(2) **[Proceedings to enforce — stay, etc.]** In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service, the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service —

(a) Stay the proceedings as provided in this Act; or

(b) Make such other disposition of the case as may be equitable to conserve the interests of all parties. [— *Stat. L.* —.]

(3) **[Sales under judgments.]** No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereof made and approved by the court. [*— Stat. L. —.*]

ARTICLE IV.

INSURANCE.

SEC. 400. **[Insurance — definitions — “policy” — “premiums” — “insured” — “insurer.”]** That in this Article the term “policy” shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term “premium” shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term “insured” shall include any person who is the holder of a policy as defined in this Article; the term “insurer” shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this Article. [*— Stat. L. —.*]

SEC. 401. **[Persons entitled to benefits of Article — forms — contents — disposition — duties of Bureau of War Risk Insurance.]** That the benefits of this Article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Secretary of the Treasury. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this Article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this Article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Bureau of War Risk Insurance.

The Bureau of War Risk Insurance shall issue through suitable military and naval channels a notice explaining the provisions of this Article and shall furnish forms to be distributed to those desiring to make application for its benefits. [*— Stat. L. —.*]

SEC. 402. **[Policies to which Act applies.]** That the benefits of this Act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of \$5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before September first, nineteen hundred and seventeen; but in no event shall the provisions of this Article apply to

any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this Article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than fifty per centum of the cash surrender value of the policy. [— *Stat. L.* —.]

SEC. 403. [List of applicants — Bureau of War Risk Insurance — rejection of applications.] That the Bureau of War Risk Insurance shall, subject to regulations, which shall be prescribed by the Secretary of the Treasury, compile and maintain a list of such persons in military service as have made application for the benefits of this Article, and shall (1) reject any applications for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section four hundred and two; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this Article. Said bureau shall immediately notify the insurer and the insured in writing of every rejection or approval. [— *Stat. L.* —.]

SEC. 404. [Rejection of applications in excess of amount allowed — preferences.] That when one or more applications are made under this Article by any one person in military service in respect of insurance exceeding a total face value of \$5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Bureau of War Risk Insurance shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of \$5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said bureau shall immediately notify the insurer and the insured in writing of such selection. [— *Stat. L.* —.]

SEC. 405. [Forfeiture of policy for nonpayment of premium.] That no policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this Article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: *Provided*, That in no case shall this prohibition extend for more than one year after the termination of the war. [— *Stat. L.* —.]

SEC. 406. [Reports by insurers — contents.] That within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the termination of the war, every insurance corporation or association to which application has been made as herein provided, or the benefits of this Article, shall render to the Bureau of War Risk Insurance a report, duly verified, setting forth the following facts:

First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons, during the preceding calendar month;

Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this Article which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default;

Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or some one on his behalf in whole or in part during the preceding calendar month;

Fourth. A computation of the difference between the total amount of defaulted premiums therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default, upon policies in respect of which the Bureau of War Risk Insurance has, since the date of such report, rejected an application for the benefits of this Article. The final sum so arrived at shall be denominated the monthly difference. [— *Stat. L.* —.]

SEC. 407. **[Verification and certification of reports.]** That the Bureau of War Risk Insurance shall verify the computation of monthly difference reported by each insurer, and shall certify it, as corrected, to the Secretary of the Treasury and the insurer. [— *Stat. L.* —.]

SEC. 408. **[Delivery of bonds to insurers — insolvency of insurers — semiannual statements by insurers.]** That the Secretary of the Treasury shall, within ten days thereafter, deliver each month to the proper officer of each insurer, bonds of the United States to the amount of that multiple of \$100 nearest to the monthly difference certified in respect of each insurer. Such bonds shall be registered in the names of the respective insurers, who shall be entitled to receive the interest accruing thereon, and such bonds shall not be transferred, or again registered, except upon the approval of the Director of the Bureau of War Risk Insurance, and shall remain in the possession of the insurer until settlement is made in accordance with this Article: *Provided*, That whenever the fact of insolvency shall be ascertained by the Director of the Bureau of War Risk Insurance all obligations on the part of the United States, under this Article, for future premiums on policies of such insurer shall thereupon terminate. An insurer shall furnish semiannual statements to the Bureau of War Risk Insurance. [— *Stat. L.* —.]

SEC. 409. **[Bonds as security for unpaid interest — lien of United States on policy — loans and dividends.]** That the bonds so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this Article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid or any loan or settlement is made the written consent of the Bureau of War Risk Insurance must be obtained. [— *Stat. L.* —.]

SEC. 410. [Death of insured — unpaid premiums.] That in the event that the military service of any person being the holder of a policy receiving the benefits of this Article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid. [— *Stat. L.* —.]

SEC. 411. [Failure to pay past due premiums — effect on policy.] That if the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service at the termination of the war such lapse shall occur and surrender value be payable at the expiration of one year after the termination of the war. [— *Stat. L.* —.]

SEC. 412. [Account stated between United States and insurer — items credited to insurer.] That at the expiration of one year after the termination of the war there shall be an account stated between each insurer and the United States, in which the following items shall be credited to the insurer:

(1) The total amount of the monthly differences reported under this Article;

(2) The difference between the total interest received by the insurer upon the bonds held by it as security and the total interest upon such monthly differences at the rate of five per centum per annum; and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section four hundred and eleven, but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans. [— *Stat. L.* —.]

SEC. 413. [Payment of balance in favor of insurer.] That the balance in favor of the insurer shall, in each case, be paid to it by the United States upon the surrender by the insurer of the bonds delivered to it from time to time by the Secretary of the Treasury under the provisions of this Article. [— *Stat. L.* —.]

SEC. 414. [Policies to which Act does not apply.] That this Article shall not apply to any policy which is void or which may at the option of the insurer be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium. [— *Stat. L.* —.]

SEC. 415. [Insurers to which Act applies.] That this Article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service. [— *Stat. L.* —.]

ARTICLE V.

TAXES AND PUBLIC LANDS.

SEC. 500. (1) [Taxes and assessments.] That the provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid. [— *Stat. L.* —.]

(2) [Enforcement of collection — stay.] When any person in military service, or any person in his behalf, shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments, an affidavit showing (a) that a tax or assessment has been assessed upon property which is the subject of this section, (b) that such tax or assessment is unpaid, and (c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the war. [— *Stat. L.* —.]

(3) [Redemption of property sold or forfeited.] When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the termination of the war; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption. [— *Stat. L.* —.]

(4) [Unpaid taxes or assessments — interest — penalties.] Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. [— *Stat. L.* —.]

SEC. 501. [Public lands — entrymen and settlers in military service — protection of rights.] That no right to any public lands initiated or acquired prior to entering military service by any person under the homestead laws, the desert-land laws, the mining-land laws, or any other laws of the United States, shall be forfeited or prejudiced by reason of his absence from such land, or of his failure to perform any work or make any improvements thereon, or to do any other act required by any such law during the period of such service. Nothing in this section contained shall be construed to deprive a person in military service or his heirs or devisees of any benefits to which he or they may be entitled under the Act entitled "An Act for the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war," approved July twenty-eighth, nineteen hundred and seventeen; the Act entitled "An Act for the protection of desert-land entrymen who enter the military or naval service of the United States in time of war," approved August seventh, nineteen hundred and seventeen; the Act entitled "An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August tenth, nineteen hundred and seventeen; the joint resolution "To relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men, from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen; or any other Act or resolution of Congress: *Provided*, That nothing in this section contained shall be construed to limit or affect the right of a person in the military service to take any action during his term of service that may be authorized by law, or the regulations of the Interior Department thereunder, for the perfection, defense, or further assertion of rights initiated prior to the date of entering military service, and it shall be lawful for any person while in military service to make any affidavit or submit any proof that may be required by law, or the practice of the General Land Office in connection with the entry, perfection, defense, or further assertion of any rights initiated prior to entering military service, before the officer in immediate command and holding a commission in the branch of the service in which the party is engaged, which affidavits shall be as binding in law and with like penalties as if taken before the Register of the United States Land Office. [— *Stat. L.* —.]

For the Act of July 28, 1917, ch. —, and the Act of Aug. 7, 1917, ch. —, mentioned in the text, see PUBLIC LANDS, *ante*, p. 692 *et seq.*

For the Act of Aug. 10, 1917, ch. —, mentioned in the text, see AGRICULTURE, *ante*, p. 44.

For the Res. of July 17, 1917, No. —, mentioned in the text, see MINERAL LANDS, MINES, AND MINING, *ante*, p. 460.

ARTICLE VI.

ADMINISTRATIVE REMEDIES.

SEC. 600. [Transfers of property, etc., with intent to delay — effect on power of court to ignore provisions of Act.] That where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since

the date of the approval of this Act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made the provisions of this Act to the contrary notwithstanding. [— *Stat. L.*—.]

SEC. 601. (1) [**Evidence of military service.**] That in any proceeding under this Act a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army, signed by the Chief of the Bureau of Navigation of the Navy Department as to persons in the Navy or in any other branch of the United States service while serving pursuant to law with the Navy, and signed by the Major General, Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and place where such person died in or was discharged from such service.

It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificate to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same. [— *Stat. L.* —.]

(2) [**Continuance in service—missing or dead persons.**] Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of War or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the termination of the war. [— *Stat. L.* —.]

SEC. 602. [**Interlocutory orders.**] That any interlocutory order made by any court under the provisions of this Act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. [— *Stat. L.* —.]

SEC. 603. [**Termination of Act.**] That this Act shall remain in force until the termination of the war, and for six months thereafter: *Provided*,

That wherever under any section or provision of this Act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided, the due exercise or enjoyment of which may extend beyond the period herein fixed for the termination of this Act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of the proceeding, remedy, privilege, stay, limitation, accounting, or transaction aforesaid. [— *Stat. L.* —.]

SEC. 604. [Name of Act.] That this Act may be cited as the Soldiers' and Sailors' Civil Relief Act. [— *Stat. L.* —.]

STATE DEPARTMENT

Act of Oct. 6, 1917, ch. —, 825.

Sec. 1. Additional Employees, 825.

[SEC. 1.] [Additional employees.] * * * For additional employees in the Department of State, \$85,000: *Provided*, That not more than two persons shall be employed hereunder at a rate of compensation exceeding \$1,800 per annum. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

STATISTICS

See CENSUS; COMMERCE DEPARTMENT.

STEAM VESSELS

Act of Feb. 14, 1917, ch. 63, 826.

Sec. 1. Number of Passengers Allowable — R. S. Sec. 4464 Amended, 826.

2. Penalty for Carrying too Great a Number of Passengers — R. S. Sec. 4465 Amended, 826.

3. Special Permit for Excursions — R. S. Sec. 4466 Amended, 827.

Act of March 29, 1918, ch. —, 827.

Passenger Vessels — Carrying Dangerous Articles — Petroleum Products, 827.

Act of May 11, 1918, ch. —, 828.

Sec. 1. Officers and Crew — Number — Certificate of Inspection — Entries — Deficiency in Crew — Penalty — R. S. Sec. 4463 Amended, 828.

2. Certificate of Inspection — Entries — Licensed Master — Licensed Mates — Increase of Licensed Officers, 828.

Sec. 3. Period of Duty of Officers, 829.

4. Repeal of Conflicting Laws, 829.

Act of June 10, 1918, ch. — 829.

Sec. 1. Appeal from Board of Local Inspectors of Vessels and Supervising Inspectors — Application When Made — Counsel — Witnesses, 829.

2. Disagreement between Local Inspectors — Reporting Case for Review — Authority of Supervising Inspectors and Supervising Inspector General to Review, 830.

3. Authority of Reviewing Officers to Revoke, Change or Modify Decisions — Authority as to Witnesses, 830.

4. Regulations by Secretary of Commerce, 830.

5. R. S. 4452 Repealed, 830.

Act of July 2, 1918, ch. —, 831.

Supervising Inspector-General and Deputy Supervising Inspectors — Local and Other Inspectors — R. S. secs. 4402, 4404, 4414 amended, 831.

An Act To amend section forty-four hundred and sixty-four of the Revised Statutes of the United States, relating to number of passengers to be stated in certificates of inspection of passenger vessels, and section forty-four hundred and sixty-five of the Revised Statutes of the United States, prescribing penalty for carrying excessive number of passengers on passenger vessels, and section forty-four hundred and sixty-six of the Revised Statutes of the United States, relating to special permits for excursions on passenger steamers.

[Act of Feb. 14, 1917, ch. 63, 39 Stat. L. 918.]

[SEC. 1.] **[Number of passengers allowable — R. S. sec. 4464 amended.]**

That section forty-four hundred and sixty-four of the Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

“SEC. 4464. The board of local inspectors shall state in every certificate of inspection granted to vessels carrying passengers, other than ferryboats, the number of passengers of each class that any such vessel has accommodation for and can carry with prudence and safety. They shall report their action to the supervising inspector of the district, who may at any time order the number of such passengers decreased, giving his reasons therefor in writing and thereupon the board of local inspectors shall change the certificate of inspection of such vessel to conform with the decision of the supervising inspector. Whenever the allowance of passengers shall be increased by any board of local inspectors such increase shall be reported to the supervising inspector of the district, together with the reasons therefor, and such increase shall not become effective until the same has been approved in writing by the supervising inspector.”

[39 Stat. L. 918.]

For R. S. sec. 4464, amended by this section, see 7 Fed. Stat. Ann. 182; 9 Fed. Stat. Ann. (2d ed.) 451.

SEC. 2. [Penalty for carrying too great a number of passengers — R. S. sec. 4465 amended.] That section forty-four hundred and sixty-five of the

Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

"SEC. 4465. It shall not be lawful to take on board of any vessel a greater number of passengers than is stated in the certificate of inspection, and for every violation of this provision the master or owner shall be liable to any person suing for the same to forfeit the amount of passage money and \$10 for each passenger beyond the number allowed.

"The master or owner of the vessel, or either or any of them, who shall knowingly violate this provision shall be liable to a fine of not more than \$100 or imprisonment of not more than thirty days, or both." [39 Stat. L. 918.]

For R. S. sec. 4465, amended by the text, see 7 Fed. Stat. Ann. 184; 9 Fed. Stat. Ann. (2d ed.) 452.

SEC. 3. [Special permit for excursions — R. S. sec. 4466 amended.]

That section forty-four hundred and sixty-six of the Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

"SEC. 4466. If any passenger vessel engages in excursions, the board of local inspectors shall issue to such vessel a special permit, in writing, for the occasion, in which shall be stated the additional number of passengers that may be carried and the number and kind of life-saving appliances that shall be provided for the safety of such additional passengers; and they shall also, in their discretion, limit the route and distance for such excursions: *Provided, however*, That the issuance of such special permit shall be reported by the board of local inspectors to the supervising inspector of the district, and such special permit shall not be effective until approved by the said supervising inspector." [39 Stat. L. 918.]

For R. S. sec. 4466, amended by this section, see 7 Fed. Stat. Ann. 164; 9 Fed. Stat. Ann. (2d ed.) 453.

An Act To permit the use of certain refined products of petroleum as stores on steam vessels carrying passengers.

[Act of March 29, 1918, ch. —, — Stat. L. —.]

[Passenger vessels — carrying dangerous articles — petroleum products.] That section forty-four hundred and seventy-two of the Revised Statutes of the United States of America be, and the same is hereby, amended by adding thereto the following provision: "*Provided, however*, That kerosene and lubricating oils made from refined products of petroleum which will stand a fire test of not less than three hundred degrees Fahrenheit may be used as stores on board steamers carrying passengers, under such regulations as shall be prescribed by the Board of Supervising Inspectors with the approval of the Secretary of Commerce." [— Stat. L. —.]

For R. S. sec. 4472, see 7 Fed. Stat. Ann. 187; 9 Fed. Stat. Ann. (2d ed.) 458.

An Act To amend the Act of March third, nineteen hundred and thirteen, entitled "An Act to regulate the officering and manning of vessels subject to the inspection laws of the United States."

[*Act of May 11, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Officers and crew — number — certificate of inspection — entries — deficiency in crew — penalty — R. S. sec. 4463 amended.]** That section forty-four hundred and sixty-three of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

"SEC. 4463. No vessel of the United States subject to the provisions of this title or to the inspection laws of the United States shall be navigated unless she shall have in her service and on board such complement of licensed officers and crew including certificated lifeboat men, separately stated, as may, in the judgment of the local inspectors who inspect the vessel, be necessary for her safe navigation. The local inspectors shall make in the certificate of inspection of the vessel an entry of such complement of officers and crew including certificated lifeboat men, separately stated, which may be changed from time to time by indorsement on such certificate by local inspectors by reason of change of conditions or employment. Such entry or indorsement shall be subject to a right of appeal, under regulations to be made by the Secretary of Commerce, to the supervising inspector and from him to the Supervising Inspector General, who shall have the power to revise, set aside, or affirm the said determination of the local inspectors.

"If any such vessel is deprived of the services of any number of the crew including certificated lifeboat men, separately stated, without the consent, fault, or collusion of the master, owner, or any person interested in the vessel, the vessel may proceed on her voyage if, in the judgment of the master, she is sufficiently manned for such voyage: *Provided*, That the master shall ship, if obtainable, a number equal to the number of those whose services he has been deprived of by desertion or casualty, who must be of the same grade or of a higher rating with those whose places they fill. If the master shall fail to explain in writing the cause of such deficiency in the crew including certificated lifeboat men, separately stated, to the local inspectors within twelve hours of the time of the arrival of the vessel at her destination, he shall be liable to a penalty of \$50. If the vessel shall not be manned as provided in this Act, the owner shall be liable to a penalty of \$100, or in case of an insufficient number of licensed officers to a penalty of \$500." [*— Stat. L. —.*]

For R. S. sec. 4463, before amendment, see 7 Fed. Stat. Ann. 181; 9 Fed. Stat. Ann. (2d ed.) 449.

SEC. 2. [Certificate of inspection — entries — licensed master — licensed mates — increase of licensed officers.] That the board of local inspectors shall make an entry in the certificate of inspection of every ocean and coastwise seagoing merchant vessel of the United States propelled by machinery, and every ocean-going vessel carrying passengers, the minimum number of licensed deck officers required for her safe navigation according to the following scale:

That no such vessel shall be navigated unless she shall have on board and in her service one duly licensed master.

That every such vessel of one thousand gross tons and over, propelled by machinery, shall have in her service and on board three licensed mates, who shall stand in three watches while such vessel is being navigated, unless such vessel is engaged in a run of less than four hundred miles from the port of departure to the port of final destination, then such vessel shall have two licensed mates; and every vessel of two hundred gross tons and less than one thousand gross tons, propelled by machinery, shall have two licensed mates.

That every such vessel of one hundred gross tons and under two hundred gross tons, propelled by machinery, shall have on board and in her service one licensed mate, but if such vessel is engaged in a trade in which the time required to make the passage from the port of departure to the port of destination exceeds twenty-four hours, then such vessel shall have two licensed mates.

That nothing in this section shall be so construed as to prevent local inspectors from increasing the number of licensed officers on any vessel subject to the inspection laws of the United States, if, in their judgment, such vessel is not sufficiently manned for her safe navigation: *Provided*, That this section shall not apply to fishing or whaling vessels, yachts, or motor boats as defined in the Act of June ninth, nineteen hundred and ten, or to wrecking vessels. [— *Stat. L.* —.]

SEC. 3. [Period of duty of officers.] That it shall be unlawful for the master, owner, agent, or other person having authority to permit an officer of any vessel to take charge of the deck watch of the vessel upon leaving or immediately after leaving port, unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing, and no licensed officer on any ocean or coastwise vessel shall be required to do duty to exceed nine hours of any twenty-four while in port, including the date of arrival, or more than twelve hours of any twenty-four at sea, except in a case of emergency when life or property is endangered. Any violation of this section shall subject the person or persons guilty thereof to a penalty of \$100. [— *Stat. L.* —.]

SEC. 4. [Repeal of conflicting laws.] That all laws or parts of laws in conflict with this Act are hereby repealed. [— *Stat. L.* —.]

An Act To provide for appeals from decisions of boards of local inspectors of vessels, and for other purposes.

[*Act of June 10, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] Appeal from board of local inspectors of vessels and supervising inspectors — application when made — counsel — witnesses.] That whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved

by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any decision or action of a supervising inspector to the Supervising Inspector General, whose decision, when approved by the Secretary of Commerce, shall be final: *Provided, however,* That application for such reexamination of the case by a supervising inspector or by the Supervising Inspector General shall be made within thirty days after the decision or action appealed from shall have been rendered or taken: *And provided further,* That in all cases reviewed under the provisions of this Act where the issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf. [— *Stat. L.* —.]

SEC. 2. [Disagreement between local inspectors — reporting case for review — authority of supervising inspectors and Supervising Inspector general to review.] That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same. Any supervising inspector may within thirty days thereafter, upon his own motion, review any decision or action of any board of local inspectors within his district and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors, and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final. [— *Stat. L.* —.]

SEC. 3. [Authority of reviewing officers to revoke, change or modify decisions — authority as to witnesses.] That any decision or action reviewed by the Supervising Inspector General or by any supervising inspector, as provided in sections one and two of this Act, may be revoked, changed, or modified by such reviewing officer, who shall have power to administer oaths and to summon and compel the attendance of witnesses by a similar process as in the district courts of the United States; and the disbursing clerk, Department of Commerce, shall pay, on properly certified vouchers, such fees to any witness so summoned for his actual travel and attendance as shall be officially certified to by the officer reviewing the case, not exceeding the rate allowed for fees to witnesses for travel and attendance in the district courts of the United States. [— *Stat. L.* —.]

SEC. 4. [Regulations by Secretary of Commerce.] That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this Act. [— *Stat. L.* —.]

SEC. 5. [R. S. 4452 repealed.] That section forty-four hundred and fifty-two of the Revised Statutes, as amended by section six of the Act of March third, nineteen hundred and five, is hereby repealed. [— *Stat. L.* —.]

For R. S. sec. 4452, see 10 Fed. Stat. Ann. 248; 6 Fed. Stat. Ann. (2d ed.) 1261.

An Act To amend sections forty-four hundred and two, forty-four hundred and four, and forty-four hundred and fourteen of the Revised Statutes of the United States.

[*Act of July 2, 1918, ch. —, — Stat. L. —.*]

[Supervising inspector general and deputy supervising inspectors — local and other inspectors — R. S. secs. 4402, 4404, 4414 amended.] That sections forty-four hundred and two, forty-four hundred and four, and forty-four hundred and fourteen of the Revised Statutes of the United States be, and they are hereby, amended to read as follows:

“SEC. 4402. That there shall be a supervising inspector general, who shall be appointed from time to time by the President, by and with the advice and consent of the Senate, and who shall be selected with reference to his fitness and ability to systematize and carry into effect all the provisions of law relating to the Steamboat-Inspection Service, and who shall be entitled to a salary of \$5,000 a year and his actual necessary traveling expenses while traveling on official business assigned to him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to under such instructions as shall be given by the Secretary of Commerce.

“The Secretary of Commerce may appoint a deputy supervising inspector general, who shall be the chief clerk of the bureau and in the absence of the supervising inspector general have power to act in his stead, and who shall be entitled to a salary of \$3,000 per year.

“SEC. 4404. There shall be eleven supervising inspectors, who shall be appointed by the President, by and with the advice and consent of the Senate. Each of them shall be selected for his knowledge, skill, and practical experience in the uses of steam for navigation, and shall be a competent judge of the character and qualities of steam vessels and of all parts of the machinery employed in steaming. Each supervising inspector shall be entitled to a salary of \$3,450 a year and his actual necessary traveling expenses while traveling on official business assigned him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to under such instructions as shall be given by the Secretary of Commerce.

“SEC. 4414. There shall be in each of the following collection districts, namely, the districts of Philadelphia, Pennsylvania; San Francisco, California; New London, Connecticut; Baltimore, Maryland; Detroit, Michigan; Chicago, Illinois; Bangor, Maine; New Haven, Connecticut; Michigan, Michigan; Milwaukee, Wisconsin; Willamette, Oregon; Puget Sound, Washington; Savannah, Georgia; Pittsburgh, Pennsylvania; Oswego, New York; Charleston, South Carolina; Duluth, Minnesota; Superior, Michigan; Apalachicola, Florida; Galveston, Texas; Mobile, Alabama; Providence, Rhode Island; and in each of the following ports: New York, New York; Jacksonville, Florida; Tampa, Florida; Portland, Maine; Boston, Massachusetts; Buffalo, New York; Cleveland, Ohio; Toledo, Ohio; Norfolk, Virginia; Evansville, Indiana; Dubuque, Iowa; Louisville, Kentucky; Albany, New York; Cincinnati, Ohio; Memphis, Tennessee; Nashville, Tennessee; Saint Louis, Missouri; Port Huron, Michigan; New Orleans, Louisiana; Los Angeles, California; Juneau, Alaska; Saint Michael,

Alaska; Point Pleasant, West Virginia; and Burlington, Vermont; Honolulu, Hawaii; and San Juan, Porto Rico; one inspector of hulls and one inspector of boilers.

“The inspector of hulls and the inspector of boilers in the districts and ports enumerated in the preceding paragraphs shall be entitled to the following salaries, to be paid under the direction of the Secretary of Commerce, namely:

“For the port of New York, New York; at the rate of \$2,950 per year for each local inspector.

“For the districts of Philadelphia, Pennsylvania; Baltimore, Maryland; San Francisco, California; and Puget Sound, Washington; and the ports of Boston, Massachusetts; Buffalo, New York; and New Orleans, Louisiana; at the rate of \$2,700 per year for each local inspector.

“For the districts of Michigan, Michigan; Milwaukee, Wisconsin; Duluth, Minnesota; Providence, Rhode Island; Chicago, Illinois; and the ports of Albany, New York; Cleveland, Ohio; Portland, Maine; Los Angeles, California; Juneau, Alaska; Saint Michael, Alaska; and Norfolk, Virginia; Honolulu, Hawaii; and San Juan, Porto Rico; at the rate of \$2,500 per year for each local inspector.

“For the districts of Oswego, New York; Willamette, Oregon; Detroit, Michigan; and Mobile, Alabama; and the ports of Saint Louis, Missouri; and Port Huron, Michigan; at the rate of \$2,350 per year for each local inspector.

“For the districts of Pittsburgh, Pennsylvania; New Haven, Connecticut; Savannah, Georgia; Charleston, South Carolina; Galveston, Texas; New London, Connecticut; Superior, Michigan; Bangor, Maine; and Apalachicola, Florida; and the ports of Dubuque, Iowa; Toledo, Ohio; Evansville, Indiana; Memphis, Tennessee; Nashville, Tennessee; Point Pleasant, West Virginia; Burlington, Vermont; Jacksonville, Florida; Tampa, Florida; Louisville, Kentucky; and Cincinnati, Ohio; at the rate of \$2,100 per year for each local inspector.

“And in addition the Secretary of Commerce may appoint, in districts or ports where the volume of work requires them, assistant inspectors, at a salary, for the port of New York, \$2,500 a year each; for the port of New Orleans, Louisiana; the districts of Philadelphia, Pennsylvania; Baltimore, Maryland; the ports of Boston, Massachusetts; Providence, Rhode Island; and the district of San Francisco, California, at \$2,350 per year each, and for all other districts and ports at a salary of \$2,100 a year each; and he may appoint a clerk to any such board at a compensation not exceeding \$1,500 a year to each person so appointed. Every inspector provided for in this or the preceding sections of this title shall be paid his actual necessary traveling expenses while traveling on official business assigned him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to under such instructions as shall be given by the Secretary of Commerce.

“Assistant inspectors, appointed as provided by law, shall perform such duties of actual inspection as may be assigned to them under the direction, supervision, and control of the local inspectors.

“The Secretary of Commerce may appoint not exceeding four traveling

inspectors when in his judgment they are necessary for the improvement of the service, each of whom shall be entitled to a salary of \$3,000 a year and his actual and necessary traveling expenses while traveling on official business.

“That all officers and employees provided for in this Act shall not receive the additional compensation authorized by section six of the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

“And the Secretary of Commerce may from time to time detail said assistant inspectors of one port or district for service in any other port or district, as the needs of the Steamboat-Inspection Service may, in his discretion, require, and the actual necessary traveling expenses of assistant inspectors so detailed, while traveling on official business assigned them by competent authority, shall, subject to such limitations as the said Secretary may in his discretion prescribe, be paid in the same manner as provided in this section for inspection.

“Assistant inspectors, appointed as provided by law, shall perform such duties of actual inspection as may be assigned to them under the direction, supervision, and control of the local inspectors.

“The Secretary of Commerce may appoint not exceeding four traveling inspectors, when in his judgment they are necessary for the improvement of the service, each of whom shall be entitled to a salary of \$3,000 a year and his actual necessary traveling expenses while traveling on official business.

“That all officers and employees provided for in this Act shall not receive the additional compensation authorized by section six of the Act making appropriations for legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

“And the Secretary of Commerce may from time to time detail said assistant inspectors of one port or district for service in any other port or district, as the needs of the Steamboat-Inspection Service may, in his discretion, require, and the actual necessary traveling expenses of assistant inspectors so detailed, while traveling on official business assigned them by competent authority, shall, subject to such limitations as the said Secretary may in his discretion prescribe, be paid in the same manner as provided in this section for inspection.” [— *Stat. L.* —.]

For R. S. sec. 4402, 4404 and 4414, amended by this Act, see 7 Fed. Stat. Ann. 163, 166; 9 Fed. Stat. Ann. (2d ed.) 420, 421, 425.

R. S. sec. 4414 had previously been amended by the Act of Feb. 26, 1917, ch. 125, 39 Stat. L. 942, which provided as follows:

“That the first and seventh paragraphs of section forty-four hundred and fourteen of the Revised Statutes of the United States, as amended by the Act of April ninth, nineteen hundred and six, be amended by inserting after the words ‘Jacksonville, Florida,’ in each paragraph, the words ‘Tampa, Florida.’”

TARIFF COMMISSION

See CUSTOMS DUTIES.

TAXATION

See INTERNAL REVENUE

TELEGRAPHS, TELEPHONES AND CABLES

Res. of July 16, 1918, No. —, 834.

Government Control of Wires and Radio Systems — Compensation, 834.

Joint Resolution To authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems or any part thereof and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide just compensation therefor.

[Res. of July 16, 1918, No. —, — Stat. L. —.]

[Government control of wires and radio systems — compensation.]

That the President during the continuance of the present war is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided*, That just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: *Provided further*, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems. *[— Stat. L. —.]*

TERRITORIES

See PHILIPPINE ISLANDS; PORTO RICO; WEST INDIAN ISLANDS.

THREATS AGAINST PRESIDENT

See PRESIDENT

THRIFT STAMPS

See PUBLIC DEBT

TIMBER LANDS AND FOREST RESERVES

*Act of July 3, 1916, ch. 218, 835.**Florida National Forest — Consolidation of Lands, 835.**Act of July 11, 1916, ch. 241, 836.**Sec. 8. Roads in and Adjacent to National Forests — Appropriation, 836.**Act of Aug. 8, 1916, ch. 295, 837.**Forest Reserves — Entry of Agricultural Lands within — Former Act Repealed, 837.**Act of Aug. 11, 1916, ch. 313, 837.**Sec. 1. Forest Reserves — Deposits by Timber Purchasers — Purpose, 837.**Protection of Game, etc., on Forest Reserve, 837.**Act of Sept. 8, 1916, ch. 469, 838.**Pike National Forest — Reservation of Land, 838.**Act of Sept. 8, 1916, ch. 471, 838.**Oregon National Forest — Consolidation of Lands, 838.**Act of Sept. 8, 1916, ch. 474, 838.**Colorado and Pike National Forests — Enlargement of Boundaries, 838.**Act of Sept. 8, 1916, ch. 476, 841.**Sec. 1. Whitman National Forest — Adjustment of Boundaries, 841.**2. Authority of Secretary of Interior to Accept Title to Lands — Exchange, 841.**Act of March 4, 1911, ch. 186, 841.**National Forests at Headwaters — Permits for Hunting, etc. — Disposition of Moneys Received, 841.**National Forests at Headwaters — Development of Mineral Resources — Disposition of Moneys Received, 842.**Act of June 12, 1917, ch. —, 842.**Sec. 1. North Carolina Forest Reserve — Acceptance of Lands, etc., 842.*

CROSS-REFERENCES

See also *PUBLIC LANDS; PUBLIC PARKS.***An Act To consolidate certain forest lands in the Florida National Forest.***[Act of July 3, 1916, ch. 218, 39 Stat. L. 344.]*

[Florida National Forest — consolidation of lands.] That the Secretary of the Interior, for the purpose of consolidating the forest lands belonging

to the United States within the Florida National Forest, be, and he is hereby, authorized and empowered, upon the recommendation of the Secretary of Agriculture, to exchange lands belonging to the United States which are part of the Florida National Forest for privately owned lands of approximately equal value, as determined by the Secretary of Agriculture, within the exterior limits of said national forest, which lands upon the consummation of the exchange shall become a part of the Florida National Forest. [39 Stat. L. 344.]

SEC. 8. [Roads in and adjacent to national forests — appropriation.] That there is hereby appropriated and made available until expended, out of any moneys in the National Treasury not otherwise appropriated, the sum of \$1,000,000 for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and each fiscal year thereafter, up to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-six, in all \$10,000,000, to be available until expended under the supervision of the Secretary of Agriculture, upon request from the proper officers of the State, Territory, or county for the survey, construction, and maintenance of roads and trails within or only partly within the national forests, when necessary for the use and development of resources upon which communities within and adjacent to the national forests are dependent: *Provided*, That the State, Territory, or county shall enter into a cooperative agreement with the Secretary of Agriculture for the survey, construction, and maintenance of such roads or trails upon a basis equitable to both the State, Territory, or county, and the United States: *And provided also*, That the aggregate expenditures in any State, Territory, or county shall not exceed ten per centum of the value, as determined by the Secretary of Agriculture, of the timber and forage resources which are or will be available for income upon the national forest lands within the respective county or counties wherein the roads or trails will be constructed; and the Secretary of Agriculture shall make annual report to Congress of the amounts expended hereunder.

That immediately upon the execution of any cooperative agreement hereunder the Secretary of Agriculture shall notify the Secretary of the Treasury of the amount to be expended by the United States within or adjacent to any national forest thereunder, and beginning with the next fiscal year and each fiscal year thereafter the Secretary of the Treasury shall apply from any and all revenues from such forest ten per centum thereof to reimburse the United States for expenditures made under such agreement until the whole amount advanced under such agreement shall have been returned from the receipts from such national forest. [39 Stat. L. 358.]

This is from an Act of July 11, 1916, ch. 241, entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes." For other provisions of this Act, see *POSTAL SERVICE*, *ante*, p. 639.

An Act To repeal section four of the Act of Congress approved June eleventh, nineteen hundred and six, known as the forest homestead Act, and for other purposes.

[*Act of Aug. 8, 1916, ch. 295, 39 Stat. L. 440.*]

[**Forest reserves — entry of agricultural lands within — former Act repealed.**] That section four of the Act of Congress, approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of agricultural lands within forest reserves," as amended by the Act of February eighth, nineteen hundred and seven (Statutes at Large, volume thirty-four, page eight hundred and eighty-three), and by the Act of July third, nineteen hundred and twelve (Statutes at Large, volume thirty-seven, page one hundred and eighty-eight), be, and the same is hereby, repealed. All lands within national forests in Lawrence and Pennington Counties, in South Dakota, shall be and remain subject to all other provisions of the said Act of June eleventh, nineteen hundred and six, and Acts amendatory thereof and supplementary thereto. [39 Stat. L. 440.]

For the Act of June 11, 1906, ch. 3074, § 4, repealed by this Act, see 1909 Supp. Fed. Stat. Ann. 663. See also 9 Fed. Stat. Ann. (2d ed.) 593, where in the notes to said repealed section as there given are set out the amendatory Acts of Feb. 8, 1907, ch. 896, and June 3, 1912, ch. 195, also repealed by the text.

[**SEC. 1.] [Forest reserves — deposits by timber purchasers — purpose.]**

* * * That hereafter deposits may be received from timber purchasers in such sums as the Secretary of Agriculture may require to cover the cost to the United States of disposing of brush and other débris resulting from cutting operations in sales of national forest timber; such deposits shall be covered into the Treasury and shall constitute a special fund which is hereby appropriated and made available until expended, as the Secretary of Agriculture may direct, to pay the cost of such work and to make refunds to the depositors of amounts deposited by them in excess of such cost. [39 Stat. L. 462.]

The foregoing and the following paragraph of the text are from the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

[**Protection of game, etc., on forest reserve.**] * * * That the President of the United States is hereby authorized to designate such areas on any lands which have been, or which may hereafter be, purchased by the United States under the provisions of the Act of March first, nineteen hundred and eleven (Thirty-sixth Statutes at Large, page nine hundred and sixty-one), entitled "An Act to enable any State to cooperate with any other State or States, or with the United States, for the protection of watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable streams," and Acts supplementary thereto and amendatory thereof, as should, in his opinion, be set aside for the protection of game animals, birds, or fish; and whoever shall hunt, catch, trap, willfully

disturb or kill any kind of game animal, game or nongame bird, or fish, or take the eggs of any such bird on any lands so set aside, or in or on the waters thereof, except under such general rules and regulations as the Secretary of Agriculture may from time to time prescribe, shall be fined not more than \$500 or imprisoned not more than six months, or both. [39 Stat. L. 476.]

See the note to the preceding paragraph of the text.

For the Act of March 1, 1911, ch. 186, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

An Act To reserve certain lands and make them a part of the Pike National Forest.

[Act of Sept. 8, 1916, ch. 469, 39 Stat. L. 844.]

[**Pike National Forest — reservation of land.**] That all lands in the State of Colorado described as follows, to wit: Section nineteen and section thirty in township two south, range seventy-two west, sixth principal base and meridian, be, and the same are hereby, reserved, subject to all prior valid adverse rights, and made a part of and included in the Pike National Forest. [39 Stat. L. 844.]

An Act To consolidate certain forest lands in the Oregon National Forest, in the State of Oregon.

[Act of Sept. 8, 1916, ch. 471, 39 Stat. L. 846.]

[**Oregon National Forest — consolidation of lands.**] That for the purpose of consolidating forest lands belonging to the United States within the Oregon National Forest, the Secretary of the Interior be, and he hereby is, authorized and empowered, upon the recommendation of the Secretary of Agriculture, to exchange, upon the basis of equal value, lands belonging to the United States in the Oregon National Forest for privately owned lands lying within the exterior limits of the Oregon National Forest; and upon the consummation of such exchanges the lands deeded to the United States shall become parts of the Oregon National Forest. [39 Stat. L. 846.]

An Act Authorizing the addition of certain lands to the Colorado and Pike National Forests, Colorado.

[Act of Sept. 8, 1916, ch. 474, 39 Stat. L. 848.]

[**Colorado and Pike National Forests — enlargement of boundaries.**] That any lands within the following-described areas, found to be chiefly valuable for the production of timber or the protection of stream flow, may be included within and made parts of the Colorado or Pike National Forests by proclamation of the President, said lands to be thereafter subject to all laws affecting national forests, and as otherwise provided herein.

Sixth principal meridian and base, State of Colorado:

Township one north, range seventy-one west: Sections twenty-nine to thirty-two, inclusive.

Township one north, range seventy-two west: Sections one to eleven inclusive; sections fourteen to twenty-three, inclusive; sections twenty-five to twenty-eight, inclusive; sections thirty-three to thirty-six, inclusive.

Township two north, range seventy-one west: Sections two to ten, inclusive; sections fifteen to twenty-two, inclusive; sections twenty-seven to thirty-four, inclusive.

All of township two north, range seventy-two west.

Township two north, range seventy-three west: All of section thirty-six.

Township three north, range seventy-one west: Sections four to nine, inclusive; sections seventeen to twenty-one, inclusive; sections twenty-six to twenty-nine, inclusive; north half of section thirty; south half of section thirty-one; sections thirty-two to thirty-five, inclusive.

Township three north, range seventy-two west: Sections one to thirty-five, inclusive.

Township three north, range seventy-three west: Sections one, two, eleven, twelve, thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-six, thirty-five, and thirty-six.

Township four north, range seventy-one west: Sections three to ten, inclusive; west half of section fourteen; sections fifteen to twenty-three, inclusive; sections twenty-six to thirty-three, inclusive.

Township four north, range seventy-two west: Sections one to five, inclusive; east half of section six; east half of section seven; sections eight to thirty, inclusive; that portion of section thirty-one lying north and east of the main hydrographic divide east of Cow Creek; sections thirty-two to thirty-six, inclusive.

Township four north, range seventy-three west: All those portions of sections ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-two, twenty-three, twenty-four, twenty-five, and thirty-six lying north and east of the divide between Aspen Brook and Fish Creek, Aspen Brook and Lily Lake, and of the main hydrographic divide east of Cow Creek.

Township five north, range seventy west: Sections four to nine, inclusive; sections seventeen and eighteen; north half of section nineteen; north half of section twenty.

Township five north, range seventy-one west: Sections one to fourteen, inclusive; north half and southeast quarter of section fifteen; sections seventeen to twenty-one, inclusive; sections twenty-seven to thirty-four, inclusive; west half of section thirty-five.

Township five north, range seventy-two west: Sections one to five, inclusive; sections ten to fifteen, inclusive; sections twenty-one to twenty-eight, inclusive; east half of section thirty-two; sections thirty-three to thirty-six, inclusive.

Township six north, range seventy west: Sections seven, eight, seventeen, eighteen, nineteen, and twenty; west half of section twenty-one; west half of section twenty-eight; sections twenty-nine to thirty-three, inclusive.

All of township six north, range seventy-one west.

Township six north, range seventy-two west: Sections one, twelve,

thirteen, fourteen, and fifteen; sections twenty-two to twenty-eight, inclusive; sections thirty-two to thirty-six, inclusive.

Township seven north, range seventy west: Sections two to eleven, inclusive; sections fourteen to thirty, inclusive; north half of section thirty-two; sections thirty-three, thirty-four, and thirty-five.

Township seven north, range seventy-one west: Sections one to thirty-five, inclusive.

Township seven north, range seventy-two west: All of section one; east half of section two; sections ten to fifteen, inclusive; sections twenty-two, twenty-three, twenty-four, twenty-five, and thirty-six.

Township eight north, range seventy west: West half of section four; sections five to eight, inclusive; west half of section nine; sections seventeen to twenty-two, inclusive; sections twenty-seven to thirty-five, inclusive.

All of township eight north, range seventy-one west.

Township eight north, range seventy-two west: All of section one.

Township nine north, range seventy west: Sections seven to ten, inclusive; sections fourteen to twenty-three, inclusive; sections twenty-eight to thirty-three, inclusive.

Township nine north, range seventy-one west: Sections twelve and thirteen; sections twenty-four to thirty-six, inclusive.

All of township nine north, range seventy-two west.

Township nine north, range seventy-three west: Sections one to six, inclusive; sections nine to sixteen, inclusive; sections twenty-one to twenty-eight, inclusive; sections thirty-three to thirty-six, inclusive.

Township ten north, range seventy-two west: Sections two to eleven, inclusive; north half of section twelve; sections fourteen to twenty-four, inclusive; sections twenty-six to thirty-five, inclusive.

All of township ten north, range seventy-three west.

Township ten north, range seventy-four west: Sections one to four, inclusive; sections ten, eleven, twelve, thirteen, twenty-four, and twenty-five.

Township eleven north, range seventy-two west: Sections two to eleven, inclusive; north half of section twelve; sections fourteen to twenty-four, inclusive; sections twenty-six to thirty-four, inclusive.

All of township eleven north, range seventy-three west.

Township eleven north, range seventy-four west: Sections two to six, inclusive; sections eight to thirty-six, inclusive.

Township eleven north, range seventy-five west: Sections six, seven, eight, and fourteen; sections seventeen to thirty-one, inclusive.

Township twelve north, range seventy-two west: Fractional sections nineteen and twenty; sections twenty-eight to thirty-four, inclusive.

Township twelve north, range seventy-three west: Fractional sections nineteen to twenty-four, inclusive; sections twenty-five to thirty, inclusive; sections thirty-two to thirty-six, inclusive.

Township twelve north, range seventy-four west: Fractional sections twenty-three and twenty-four; section twenty-six.

Township one south, range seventy-one west: Sections four to seven, inclusive; west half and northeast quarter of section eight; north half of section nine; west half of section seventeen; sections eighteen and nineteen; west half of section twenty; northwest quarter of section twenty-nine; north half of section thirty.

Township one south, range seventy-two west: Sections one to four, inclusive; sections nine to sixteen, inclusive; sections twenty-one to twenty-eight, inclusive; sections thirty-one to thirty-six, inclusive.

Township two south, range seventy-one west: Sections two to ten, inclusive.

Township two south, range seventy-two west: Sections one to twelve, inclusive.

Provided, That the Secretary of the Interior may, in his discretion, continue thereafter to allow additional entries, within the previously described areas, under the provisions of section three of the Act approved February nineteenth, nineteen hundred and nine, entitled "An Act to provide for an enlarged homestead," as amended by the Act approved March third, nineteen hundred and fifteen (Thirty-eighth Statutes, page nine hundred and fifty-six). [39 Stat. L. 848.]

For the Act of Feb. 19, 1909, ch. 160, § 3, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 560.

For the amendatory Act of March 3, 1915, ch. 91, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 198.

For said Act of Feb. 19, 1909, ch. 160, § 3, as amended by said Act of March 3, 1915, ch. 91, see 8 Fed. Stat. Ann. (2d ed.) 613.

An Act Authorizing an adjustment of the boundaries of the Whitman National Forest, in the State of Oregon, and for other purposes.

[Act of Sept. 8, 1916, ch. 476, 39 Stat. L. 852.]

[SEC. 1.] [Whitman National Forest—adjustment of boundaries.] That any land within the following-described areas found by the Secretary of Agriculture to be chiefly valuable for the production of timber or for the protection of stream flow may be included within and made part of the Whitman National Forest, in the State of Oregon, by proclamation of the President, said lands to be thereafter subject to all laws affecting national forests: Township eleven south, range thirty-four east; townships eleven and twelve south, range thirty-five east; township ten south, range thirty-five and one-half east; townships ten and eleven south, range thirty-six east, Willamette meridian, in the State of Oregon. [39 Stat. L. 852.]

SEC. 2. [Authority of Secretary of Interior to accept title to lands — exchange.] That the Secretary of the Interior be, and hereby is, authorized to accept on behalf of the United States title to any lands in private ownership within established boundaries of the said Whitman National Forest which, in the opinion of the Secretary of Agriculture, are chiefly valuable for the production of timber or the protection of stream flow, and in lieu thereof may give in exchange such Government timber in or near the Whitman National Forest as may be determined by the Secretary of Agriculture to be of approximately equal value; and any reconveyed lands shall, upon acceptance, become subject to all laws affecting national forests. [39 Stat. L. 852.]

[National forests at headwaters — permits for hunting, etc.—disposition of moneys received.] * * * That hereafter all moneys received

on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act, or any amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests. [39 Stat. L. 1149.]

This and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

The Act to which reference is made in the text is the Act of March 1, 1911, ch. 186. See 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

[National forests at headwaters — development of mineral resources — disposition of moneys received.] The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March first, nineteen hundred and eleven (Thirty-sixth Statutes, page nine hundred and sixty-one), known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States; and all moneys received on account of charges, if any, made under this Act shall be disposed of as is provided by existing law for the disposition of receipts from national forests. [39 Stat. L. 1150.]

See the note to the preceding paragraph of the text.

For the Act of March 1, 1911, ch. 186, mentioned in this paragraph, see 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

Provisions identical with those of this paragraph were made by the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313, § 1, 39 Stat. L. 462.

[SEC. 1.] [North Carolina Forest Reserve — acceptance of lands, etc.]
 * * * Hereafter the Secretary of the Interior is authorized to accept for park purposes any lands and rights of way, including the Grandfather Mountain, near or adjacent to the Government forest reserve in western North Carolina. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

TIME

Act of March 19, 1918, ch. —, 842.

Sec. 1. Saving Daylight — New Standard Time — Zones, 842.

2. Duty to Observe New Time, 843.

3. Period for Observing New Time, 843.

4. Time of Each Zone — How Designated, 843.

5. Repeals, 843.

An Act To save daylight and to provide standard time for the United States.

[*Act of March 19, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Saving daylight — new standard time — zones.] That, for the purpose of establishing the standard time of the United States, the

territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone, which shall include only Alaska, on the one hundred and fiftieth degree. That the limits of each zone shall be defined by an order of the Interstate Commerce Commission, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations, and such order may be modified from time to time. [— *Stat. L.* —.]

SEC. 2. [Duty to observe new time.] That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several States or between a State and any of the Territories of the United States, or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed. [— *Stat. L.* —.]

SEC. 3. [Period for observing new time.] That at two o'clock antemeridian of the last Sunday in March of each year the standard time of each zone shall be advanced one hour, and at two o'clock antemeridian of the last Sunday in October in each year the standard time of each zone shall, by the retarding of one hour, be returned to the mean astronomical time of the degree of longitude governing said zone, so that between the last Sunday in March at two o'clock antemeridian and the last Sunday in October at two o'clock antemeridian in each year the standard time in each zone shall be one hour in advance of the mean astronomical time of the degree of longitude governing each zone, respectively. [— *Stat. L.* —.]

SEC. 4. [Time of each zone — how designated.] That the standard time of the first zone shall be known and designated as United States Standard Eastern Time; that of the second zone shall be known and designated as United States Standard Central Time; that of the third zone shall be known and designated as United States Standard Mountain Time; that of the fourth zone shall be known and designated as United States Standard Pacific Time; and that of the fifth zone shall be known and designated as United States Standard Alaska Time. [— *Stat. L.* —.]

SEC. 5. [Repeals.] That all Acts and parts of Acts in conflict herewith are hereby repealed. [— *Stat. L.* —.]

TONNAGE DUTIES

See PHILIPPINE ISLANDS

TRADE COMBINATIONS AND TRUSTS

*Act of May 15, 1916, ch. 120, 844.**Interlocking Directors, etc., of Banks — Clayton Act of Oct. 15, 1914, ch. 323, sec. 8 Amended, 845.**Res. of Jan. 12, 1918, No. —, 845.**Clayton Anti-Trust Act of Oct. 15, 1914, ch. 323, sec. 10 — Time of Taking Effect, 845.*

CROSS-REFERENCE

See NATIONAL BANKS

An Act To amend section eight of an Act entitled “An Act to supplement existing laws, against unlawful restraints and monopolies, and for other purposes,” approved October fifteenth, nineteen hundred and fourteen.

[*Act of May 15, 1916, ch. 120, 39 Stat. L. 121.*]

[Interlocking directors, etc., of banks — Clayton Act of Oct. 15, 1914, ch. 323, sec. 8 amended.] That section eight of an Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October fifteenth, nineteen hundred and fourteen, be, and the same is hereby, amended by striking out the period at the end of the second clause of said section, inserting in lieu thereof a colon, and adding to said clause the following:

“*And provided further,* That nothing in this Act shall prohibit any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such member bank.

“The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.” [39 Stat. L. 121.]

For the Act of Oct. 15, 1914, ch. 323, § 8, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 273; 9 Fed. Stat. Ann. (2d ed.) 729.

Joint Resolution Extending until January first, nineteen hundred and nineteen, the effective date of section ten of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen.

[*Res. of Jan. 12, 1918, — Stat. L. —.*]

[**Clayton Anti-Trust Act of Oct. 15, 1914, ch. 323, sec. 10 — time of taking effect.**] That the effective date on and after which the provisions of section ten of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and nineteen: *Provided*, That said section shall become effective on January eighth, nineteen hundred and eighteen, as to any corporations hereafter organized. [*— Stat. L. —.*]

For the Act of Oct. 15, 1914, ch. 323, § 10, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 272, 9 Fed. Stat. Ann. (2d ed.) 741.

The time of taking effect of the section mentioned in the text had previously been extended to April 15, 1917, by a Res. of Aug. 31, 1916, ch. 427, 39 Stat. L. 674, and again extended to Jan. 8, 1918, by a Res. of March 4, 1917, ch. 190, 39 Stat. L. 1201.

TRADEMARKS

Act of Aug. 17, 1916, ch. 350, 845.

Sec. 1. Filing Applications — Extension of Time, 845.

2. Persons Entitled to Privilege, 845.

3. Time of Taking Effect, 845.

CROSS-REFERENCE

See *TRADING WITH THE ENEMY*

An Act To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States citizens.

[*Act of Aug. 17, 1916, ch. 350, 39 Stat. L. 516.*]

[**SEC. 1.**] [**Filing applications — extension of time.**] That any applicant for letters patent or for the registration of any trade-mark, print, or label, being within the provisions of this Act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by law, shall be granted an extension of nine months beyond the expiration of said period. [*39 Stat. L. 516.*]

Since this Act affects applications for patents as well as trademarks, it is also given under **PATENTS**, *ante*, p. 575.

SEC. 2. [Persons entitled to privilege.] That the provisions of this Act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this Act to the citizens or subjects of any country while said country is at war with the United States. [39 Stat. L. 516.]

SEC. 3. [Time of taking effect.] That this Act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this Act grants relief shall have the same force and effect as if said default had not occurred. [39 Stat. L. 516.]

TRADING WITH THE ENEMY

Act of Oct. 6, 1917, ch. 106, 847.

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Act of July 1, 1918, ch. —, 867.

Sec. 1. *Taxes Assessed against Money or other Property Held by Alien Property Custodian — Payment*, 867.

An Act To define, regulate, and punish trading with the enemy, and for other purposes.

[*Act of Oct. 6, 1917, ch. 106, 40 Stat. L. 411.*]

[SEC. 1.] [Title of Act.] That this Act shall be known as the "Trading with the enemy Act." [40 Stat. L. 411.]

SEC. 2. [Definitions — "enemy."] That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

["Ally of enemy."] The words "ally of enemy," as used herein, shall be deemed to mean —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

["Person."] The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

["United States."] The word "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

["The beginning of the war."] The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

["End of the war."] The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifica-

tions of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

["**Bank or banks.**"] The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

["**To trade.**"] The words "to trade," as used herein, shall be deemed to mean —

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with. [40 Stat. L. 411.]

SEC. 3. That it shall be unlawful —

(a) [**Trading or attempting to trade — license.**] For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) [**Transportation of subjects or citizens of enemy or ally of enemy nation.**] For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) [**Mail matter or other communication, etc.—bringing into or sending out of United States — exceptions.**] For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other

paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

"To an enemy or ally of an enemy" does not apply to the first paragraph ending at the semicolon, but only to the second paragraph. The first paragraph was intended to apply to any tangible communication, whether innocent or not, and whether intended for or delivered to a friendly or innocent person. *U. S. v. Welsh*, (S. D. N. Y. 1918) 309.

"Written or tangible form of communication" does not include a 6 per cent. coupon gold note of a private corporation unless there is extraneous matter on it. *U. S. v. Van Werkhoven*, (S. D. N. Y. 1918) 250 Fed. 311.

(d) **[Censorship of communications.]** Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act. [40 Stat. L. 412.]

SEC. 4. (a) **[Insurance, reinsurance or other business company — license — transmission of funds out of United States — existing contracts.]** Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however,* That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company. *Provided further,* That no insurance

company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however,* That after such refusal or revocation, anything in this Act to the contrary

notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) [**Change of name of company, etc.—license to do business.**] That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper. [40 Stat. L. 413.]

SEC. 5. (a) [**Suspension of Act — granting, revoking, etc., of licenses.**] That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for

a period not exceeding ninety days, pending investigation of the facts by him.

(b) [Investigation, regulation or prohibition of transactions in foreign exchange, coin, bullion, credit, evidences of indebtedness, etc.] That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transaction in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed [40 Stat. L. 415.]

SEC. 6. [Alien property custodian — appointment — salary — powers — bond — employees — report.] That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum), of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof. [40 Stat. L. 415.]

SEC. 7. (a) [Lists of officers, directors, stockholders, etc., of corporations — reports of indebtedness to enemy, etc.] That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty

days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided,* That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) [**Prior illegal acts — transfer, etc., of money — completion of contracts — payments for benefit of enemies, etc. — suits by or against enemies, etc.**] Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the

war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided*, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however*, That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further*, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at

law or in equity brought or maintained, or to any right to set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

(c) **[Delivery of property, etc., to alien property custodian.]** If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

(d) **[Transfer of money, property, etc., to alien property custodian.]** If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) **[Liability for acts done under Presidential regulation — effect of transfer of property, etc., to alien property custodian — certificate of authority of custodian, etc.]** No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other

recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States. [40 Stat. L. 416.]

SEC. 8. (a) **[Mortgage, pledge, lien, contract, etc.—termination—disposition of surplus.]** That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) **[Abrogation of contracts.]** That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of any enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) **[Suspension of statute of limitations.]** The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit

shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law. [40 Stat. L. 418.]

SEC. 9. [Claims of enemy, etc., for property — suits against claimant — liability of property for lien, attachment, etc.] That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months, after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property custodian shall

not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the alien property custodian under section ten hereof. [40 Stat. L. 419.]

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) **[Application for patent, trademark or copyright.]** An enemy, or ally of enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

(b) **[Payment of fees, etc., to enemy, etc., for patents or trademarks or copyrights.]** Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trademarks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trademark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) **[Use of enemy, etc., trademarks, copyrights, etc.—license.]** Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a licensee; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which

shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) [**Statement of use of enemy trademarks, copyrights, etc.—payment therefor.**] The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trademark, print, label, or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) [**Duration of license—termination.**] Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) [**Suits by enemy, etc., against licensee, etc., degree — injunction.**] The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party,) for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial

satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) **[Suits by enemy, etc., against infringers of patents, trademarks, etc.—decree—injunction.]** Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) **[Powers of attorney.]** All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) **[Publication of inventions, etc.]** Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government. [40 Stat. L. 420.]

SEC. 11. [Prohibition of imports.] Whenever during the present war the President shall find that the public safety so requires and shall make

proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however*, That no preference shall be given to the ports of the State over those of another. [40 Stat. L. 422.]

SEC. 12. [Disposition of money, property, etc., received by alien property custodian — duties and powers of custodian — claims of enemy, etc., for property.] That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the

ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further*, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than \$10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however*, That on order of President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further*, That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee. [40 Stat. L. 423, as amended by — Stat. L. —.]

The fourth paragraph of this section was amended to read as given in the text by the Deficiency Appropriation Act of March 28, 1918, ch. —. As originally enacted it was as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the

President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

SEC. 13. [Statements by masters, etc., of vessels.] That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen. [40 Stat. L. 424.]

For R. S. secs. 4197, 4198, 4200, mentioned in this section, see 7 Fed. Stat. Ann. pp. 45, 46; 9 Fed. Stat. Ann. (2d ed.) 296.

For the amending Act of June 15, 1917, ch. —, mentioned in this section, see NEUTRALITY, *ante*, p. 570.

SEC. 14. [Clearance of vessels — refusal — report of coin, bullion, etc., intended for export.] That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which such vessel is located is hereby authorized and empowered subject to review by the President to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the

departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy. [40 Stat. L. 424.]

SEC. 15. [Appropriation.] That the sum of \$450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing. [40 Stat. L. 425.]

SEC. 16. [Violations of Act or regulations thereunder—penalty.] That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States. [40 Stat. L. 425.]

SEC. 17. [Jurisdiction of courts.] That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary." [40 Stat. L. 425.]

For Judicial Code, §§ 128, 238, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. pp. 195, 231; 5 Fed. Stat. Ann. (2d ed.) 607, 794.

SEC. 18. [Courts of Philippine Islands and Canal Zone.] That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offense as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone. [40 Stat. L. 425.]

For Penal Laws, § 37, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. p. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 19. [Publications in foreign language concerning the Government, conduct of the war, etc.—filing translation—permit to publish without translation—penalty for false affidavit.] That ten days after the approval of this Act and until the end of the war, it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at _____ on _____ (naming the post office where the translation was filed, and the date of filing thereof), as required by the Act of _____ (here giving the date of this Act).

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: *Provided further*, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such

restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the post office of (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by section one hundred and twenty-five of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than \$500, or by imprisonment of not more than one year, or, in the discretion of the court, may be both fined and imprisoned. [40 Stat. L. 425.]

For the Espionage Act of June 15, 1917, ch. 30, mentioned in the text, see **CRIMINAL LAW**, *ante*, p. 120.

For Penal Laws, § 125, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 437; 7 Fed. Stat. Ann. (2d ed.) 670.

[SEC. 1.] [Taxes assessed against money or other property held by alien property custodian — payment.] * * * All taxes heretofore or hereafter lawfully assessed by any body politic against money or other property held by the alien property custodian shall be paid out of such money or other property, and if that be insufficient, shall be charged thereto and paid out of any other moneys or properties required from the same enemy or ally of enemy. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following an appropriation for the expenses of the alien property custodian.

TRANSFER TAX

See **INTERNAL REVENUE**.

TREASURY DEPARTMENT

Act of July 1, 1916, ch. 209, 868.

Sec. 5. Reports of Auditor — Unpaid Checks, 868.

Act of Sept. 8, 1916, ch. 464, 868.

Sec. 4. Secretary of Treasury — Estimates of Appropriations, 868.

Act of March 3, 1917, ch. 163, 869.

Sec. 1. Auditors for Post Office Department — Diminishing Number of Positions, 869.

Services of Skilled Draftsmen and Other Technical Services — Employment in Office of Coast Guard, 869.

Act of June 12, 1917, ch. 27, 869.

Sec. 1. Enforcement of Laws Relating to Department — Detail of Persons, 869.

Paper for Currency, etc. — Consolidation of Stock Accounts, 869.

Act of Sept. 27, 1917, ch. 58, 870.

Sec. 1. Building for Use of Department — Construction Authorized, 870.

2. Architectural or Other Expert Technical Services, 870.

Act of Oct. 6, 1917, ch. 79, 870.

Sec. 1. Additional Assistant Secretaries, 870.

Office of Comptroller — Additional Employees, 870.

Office of Treasurer — Additional Employees, 870.

CROSS-REFERENCES

Auditing Accounts of Military Establishment, see PUBLIC DEBT.

War Risk Insurance, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 5. [Reports of Auditor — unpaid checks.] * * * That hereafter at the termination of each fiscal year each Auditor of the Treasury shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to such auditor, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. And such reports shall be in lieu of the returns required of disbursing officers by section three hundred and ten of the Revised Statutes. [*39 Stat. L. 336.*]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For R. S. sec. 310, mentioned in the text, see 7 Fed. Stat. Ann. 396; 9 Fed. Stat. Ann. (2d ed.) 847.

SEC. 4. [Secretary of Treasury — estimates of appropriations.] That the Secretary of the Treasury shall not hereafter transmit special or additional estimates of appropriations to Congress unless they shall conform to the requirements of section four of the Act approved June twenty-second, nineteen hundred and six (Thirty-fourth Statutes, page four hundred and forty-eight. [*40 Stat. L. 830.*])

This is from the Deficiency Appropriation Act of September 8, 1916, ch. 464.

For the Act of June 22, 1906, ch. 3514, § 4, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 125; 3 Fed. Stat. Ann. (2d ed.) 134.

[SEC. 1.] **[Auditors for Post Office Department — diminishing number of positions.]** * * * Hereafter the Secretary of the Treasury may diminish from time to time, as vacancies occur by death, resignation, or otherwise, the number of positions of the several grades below the grade of chief of division in the Office of the Auditor for the Post Office Department and use the unexpended balances of the appropriations for the positions so diminished as a fund to pay the compensation, as fixed by the Secretary of the Treasury, of such number of employees as may be necessary to audit the accounts and vouchers of the Postal Service. [39 Stat. L. 1086.]

This and the following paragraph of the text are from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Services of skilled draftsmen and other technical services — employment in office of Coast Guard.] * * * The services of skilled draftsmen, and such other technical services as the Secretary of the Treasury may deem necessary may be employed only in the office of the Coast Guard in connection with the construction and repair of Coast Guard cutters, to be paid from the appropriation "Repairs to Coast Guard cutters": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each, shall be made to Congress each year in the annual estimates. [39 Stat. L. 1087.]

See the note to the preceding paragraph of the text.

Provisions identical with those of this paragraph were made by the like Act of May 10, 1916, ch. 117, § 1, 39 Stat. L. 83.

[SEC. 1.] **[Enforcement of laws relating to Department — detail of persons.]** * * * The Secretary of the Treasury is authorized to use for, and in connection with, the enforcement of the laws relating to the Treasury Department and the several branches of the public service under its control, not exceeding at any one time four persons paid from the appropriation for the collection of customs, four persons paid from the appropriation for salaries and expenses of internal-revenue agents or from the appropriation for the foregoing purpose, and four persons paid from the appropriation for suppressing counterfeiting and other crimes, but not exceeding six persons so detailed shall be employed at any one time hereunder: *Provided*, That nothing herein contained shall be constructed [*sic*] to deprive the Secretary of the Treasury from making any detail now otherwise authorized by existing law. [40 Stat. L. 118.]

This and the following paragraph of the text are from the Sundry Civil Appropriation Act of June 12, 1917, ch. 27.

Provisions similar to those of this paragraph appear almost annually.

[Paper for currency, etc.—consolidation of stock accounts.] * * * The Secretary of the Treasury is authorized to consolidate the stock accounts of distinctive paper for United States currency and for national-bank and Federal Reserve Bank currency, same to be held for issue on the basis of printing authorized by Congress. [40 Stat. L. 119.]

See the note to the preceding paragraph of the text.

An Act To authorize the construction of a building for the use of the Treasury Department.

[*Act of Sept. 27, 1917, ch. 58, 40 Stat. L. 295.*]

[SEC. 1.] **[Building for use of department — construction authorized.]** That the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be constructed, upon land belonging to the United States, at the northeast corner of Pennsylvania Avenue and Madison Place, in the city of Washington, District of Columbia, a suitable building, complete, for the use of the Treasury Department, and to cause an underground connection of said building with the Treasury building to be constructed; and the Secretary of the Treasury is hereby authorized and empowered to enter into the necessary contracts at a total limit of cost of said building and underground connection of not to exceed \$1,250,000. [40 Stat. L. 295.]

SEC. 2. **[Architectural or other expert technical services.]** That the Secretary of the Treasury is hereby further authorized, without regard to civil-service laws, rules, or regulations, to obtain such special architectural or other expert technical services as he may deem necessary and specially order in writing, and to pay for such services such prices or rates of compensation as he may consider just and reasonable from the appropriation for said building, any statute to the contrary notwithstanding. [40 Stat. L. 296.]

[SEC. 1.] **[Additional assistant secretaries.]** * * * For two additional Assistant Secretaries of the Treasury, to be appointed by the President, by and with the advice and consent of the Senate, who are authorized at the rate of \$5,000 per annum each from the date of this Act to the close of the present war and six months thereafter, \$7,500, or so much thereof as may be necessary. [40 Stat. L. 347.]

This and the two following paragraphs of the text are from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. 79.

[Office of Comptroller — additional employees.] * * * For additional employees from October first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, at annual rates of compensation as follows: Five law clerks, at \$2,000 each; clerks — two of class four, one of class three, one of class one; messenger, \$840; in all, \$12,930. [40 Stat. L. 347.]

See the note to the preceding paragraph of the text.

[Office of treasurer — additional employees.] * * * For additional employees from October first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, at annual rates of compensation as follows: Clerks — one of class four, three of class three, three of class two, ten of class one, eight at \$1,000 each, two at \$900 each; expert counters — three at \$1,200 each, two at \$1,000 each, two at \$900 each; in all, \$30,000. [40 Stat. L. 347.]

See the note to the second preceding paragraph of the text.

TRUSTS

See TRADE COMBINATIONS AND TRUSTS

UNFAIR COMPETITION

*Act of Sept. 8, 1916, ch. 463, 871.**Title VIII. Unfair Competition, 371.**Sec. 800. Definitions, 871.**801. Importation — Sales Below Actual Market Value, 871.**802. Agreements Restricting Purchase, etc., of Imported Goods, 872.**803. Rules and Regulations, 872.**804. Retaliatory Measures against Countries Prohibiting Importations, 872.**805. Retaliatory Measures against Countries at War, 873.**806. Same, 873.*

SEC. 800. [Definitions.] That when used in this title the term "person" includes partnerships, corporations, and associations. [39 Stat. L. 798.]

The foregoing section 800 and the following sections 801–806 constitute "Title VIII, Unfair Competition," of the Act of Sept. 8, 1916, ch. 463, entitled An Act To increase the revenue and for other purposes. For a reference to the entire Act see the notes to section 15 thereof in INTERNAL REVENUE, *ante*, p. 374, sections 900, 902 of this Act, given in INTERNAL REVENUE, *ante*, p. 381, provide respectively that the invalidity of any part of the Act shall not affect the remainder and that the Act shall take effect on the day following its passage unless otherwise provided.

SEC. 801. [Importation — sales below actual market value.] That it shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder. [39 Stat. L. 798.]

See the note to the preceding section 800 of this Act.

SEC. 802. [Agreements restricting purchase, etc., of imported goods.] That if any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but the proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 803. [Rules and regulations.] 'That the Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section eight hundred and two. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 804. [Retaliatory measures against countries prohibiting importations.] That whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 805. [Retaliatory measures against countries at war.] That whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than \$2,000 nor more than \$50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 806. [Same.] That whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight or passengers, or in any other respect whatsoever, he is hereby authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

That whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is hereby authorized and empowered to withhold clearance from one or more vessels of such belligerent country

until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than \$2,000 nor more than \$50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this Act, shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

That the President of the United States is hereby authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this Act. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

UNIFORMS

Protection of, see COAST GUARD; CRIMINAL LAW; WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

UNITED STATES COTTON FUTURES ACT

See INTERNAL REVENUE.

UNITED STATES GRAIN STANDARDS ACT

See AGRICULTURE.

UNITED STATES SHIPPING BOARD

See SHIPPING AND NAVIGATION.

UNITED STATES WAREHOUSE ACT

See WAREHOUSES.

VIRGIN ISLANDS

See WEST INDIAN ISLANDS.

VOCATIONAL REHABILITATION

Act of June 27, 1918, ch. —, 875.

- Sec. 1. "Vocational Rehabilitation Act" — "Board" — "Bureau," 875.*
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CROSS-REFERENCE

See *EDUCATION*.

An Act To provide for vocational rehabilitation and return to civil employment of disabled persons discharged from the military or naval forces of the United States, and for other purposes.

[*Act of June 27, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**"Vocational Rehabilitation Act"**—"board"—"bureau."] That this Act shall be known as the Vocational Rehabilitation Act. That the word "board," as hereinafter used in this Act, shall mean the "Federal Board for Vocational Education." That the word "bureau," as hereinafter used in this Act, shall mean the "Bureau of War-Risk Insurance." [*— Stat. L. —.*]

SEC. 2. [Persons affected by Act — course of vocational rehabilitation prescribed — monthly compensation — family allowances.] That every person who is disabled under circumstances entitling him, after discharge from the military or naval forces of the United States, to compensation under Article III of the Act entitled "An Act to amend an Act entitled 'An Act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' " approved October sixth, nineteen hundred and seventeen, hereinafter referred to as "said Act," and who, after his discharge, in the opinion of the board, is unable to carry on a gainful occupation, to resume his former occupation, or to enter upon some other occupation, or having resumed or entered upon such occupation is unable to continue the same successfully, shall be furnished by the said board, where vocational rehabilitation is feasible, such course of vocational rehabilitation as the board shall prescribe and provide.

The board shall have power, and it shall be its duty, to furnish the persons included in this section suitable courses of vocational rehabilitation to be prescribed and provided by the board, and every person electing to follow such a course of vocational rehabilitation shall, while following the same, receive monthly compensation equal to the amount of his monthly pay for the last month of his active service, or equal to the amount to which he would be entitled under Article III of said Act, whichever amount is the greater. If such person was an enlisted man at the time of his discharge, for the period during which he is so afforded a course of rehabilitation, his family shall receive compulsory allotment and family allowance according to the terms of Article II of said Act in the same manner as if he were an enlisted man, and for the purpose of computing and paying compulsory allotment and family allowance his compensation shall be treated as his monthly pay: *Provided*, That if such person willfully fails or refuses to follow the prescribed course of vocational rehabilitation which he has elected to follow, in a manner satisfactory to the board, the said board in its discretion may certify to that effect to the bureau and the said bureau shall, during such period of failure or refusal, withhold any part or all of the monthly compensation due such person and not subject to compulsory allotment which the said board may have determined should be withheld: *Provided, however*, That no vocational teaching shall be carried on in any hospital until the medical authorities certify that the condition of the patient is such as to justify such teaching.

The military and naval family allowance appropriation provided for in section eighteen of said Act shall be available for the payment of the family allowances provided by this section; and the military and naval compensation appropriation provided for in section nineteen of said Act shall be available for the payment of the monthly compensation herein provided. No compensation under Article III of said Act shall be paid for the period during which any such person is furnished by said board a course of vocational rehabilitation except as is hereinbefore provided. [*— Stat. L. —*]

For the War Risk Insurance Act of Sept. 2, 1914, ch. 293, art. III, as amended by the Act of Oct. 6, 1917, ch. 105, mentioned in the text, see **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.

SEC. 3. [Cost of instruction.] That the courses of vocational rehabilitation provided for under this Act shall, as far as practicable and under such conditions as the board may prescribe, be made available without cost for instruction for the benefit of any person who is disabled under circumstances entitling him, after discharge from the military or naval forces of the United States, to compensation under Article III of said Act and who is not included in section two hereof. [— *Stat. L.* —.]

SEC. 4. [Board for vocational education — powers.] That the board shall have the power and it shall be its duty to provide such facilities, instructors, and courses as may be necessary to insure proper training for such persons as are required to follow such courses as herein provided; to prescribe the courses to be followed by such persons; to pay, when in the discretion of the board such payment is necessary, the expense of travel, lodging, subsistence, and other necessary expenses of such persons while following the prescribed courses; to do all things necessary to insure vocational rehabilitation; to provide for the placement of rehabilitated persons in suitable or gainful occupations. The board shall have the power to make such rules and regulations as may be necessary for the proper performance of its duties as prescribed by this Act, and is hereby authorized and directed to utilize, with the approval of the Secretary of Labor, the facilities of the Department of Labor, in so far as may be practicable, in the placement of rehabilitated persons in suitable or gainful occupations. [— *Stat. L.* —.]

SEC. 5. [Studies, investigations, and reports.] That it shall also be the duty of the board to make or cause to have made studies, investigations, and reports regarding the vocational rehabilitation of disabled persons and their placement in suitable or gainful occupations. When the board deems it advisable, such studies, investigations, and reports may be made in cooperation with or through other departments and bureaus of the Government, and the board in its discretion may cooperate with such public or private agencies as it may deem advisable in performing the duties imposed upon it by this Act. [— *Stat. L.* —.]

SEC. 6. [Medical and surgical work or other treatment — control — cooperation of Board with War and Navy Department.] That all medical and surgical work or other treatment necessary to give functional and mental restoration to disabled persons prior to their discharge from the military or naval forces of the United States shall be under the control of the War Department and the Navy Department, respectively. Whenever training is employed as a therapeutic measure by the War Department or the Navy Department a plan may be established between these agencies and the board acting in an advisory capacity to insure, in so far as medical requirements permit, a proper process of training and the proper preparation of instructors for such training. A plan may also be established between the War and Navy Departments and the board whereby these departments shall act in an advisory capacity with the board in the care of the health of the soldier and sailor after his discharge.

The board shall, in establishing its plans and rules and regulations for vocational training, cooperate with the War Department and the Navy Department in so far as may be necessary to effect a continuous process of vocational training. [— *Stat. L.* —.]

SEC. 7. [Gifts and donations.] That the board is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally. All moneys received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the “special fund for vocational rehabilitation,” to be used under the direction of the said board, in connection with the appropriations hereby made or hereafter to be made, to defray the expenses of providing and maintaining courses of vocational rehabilitation; and a full report of all gifts and donations offered and accepted, and all disbursements therefrom, shall be submitted annually to Congress by said board. [— *Stat. L.* —.]

SEC. 8. [Available appropriations to meet expenses.] That there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, available immediately and until expended, the sum of \$2,000,000 or so much thereof as may be necessary to be used by the Federal Board for Vocational Education for the purposes of this Act, to wit, for renting and remodeling buildings and quarters, repairing, maintaining, and equipping same, and for equipment and other facilities necessary for proper instruction of disabled persons, \$250,000; for the preparation of instructors and salaries of instructors, supervisors, and other experts, including necessary traveling expenses, \$545,000; for traveling expenses of disabled persons in connection with training and for lodging, subsistence, and other necessary expenses in special cases of persons following prescribed courses, \$250,000; for tuition for disabled persons pursuing courses in existing institutions, public or private, \$545,000; for the placement and supervision after placement of vocationally rehabilitated persons, \$45 000; for studies, investigations, reports, and preparation of special courses of instruction, \$55 000; for miscellaneous contingencies, including special mechanical appliances necessary in special cases for disabled men, \$110,000; and for the administrative expenses of said board incident to performing the duties imposed by this Act, including salaries of such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere as the board may deem necessary, actual traveling and other necessary expenses incurred by the members of the board and by its employees under its orders, including attendance at meetings of educational associations and other organizations, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, law books, and periodicals, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses, \$200,000. [— *Stat. L.* —.]

SEC. 9. [Reports to Congress.] That said board shall file with the Clerk of the House and the Secretary of the Senate on July first and every three

months thereafter, for the information of the Congress, an itemized account of all expenditures made under this Act, including names and salaries of employees. Said board shall also make an annual report to the Congress of its doings under this Act on or before December first of each year. [—*Stat. L.* —.]

SEC. 10. [Repeal of conflicting statute.] That section three hundred and four of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department" approved September second, nineteen hundred and fourteen, as amended, is hereby repealed. [—*Stat. L.* —.]

The War Risk Insurance Act of Sept. 2, 1914, ch. 293, § 304, as amended by the Act of Oct. 6, 1917, ch. 105, repealed by the text, was as follows:

"SEC. 304. That in cases of dismemberment, of injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, reeducation, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being.

"In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until such willful failure ceases and no compensation shall be payable for the intervening period."

SEC. 11. [Persons of draft age employed under terms of Act — exemption.] No person of draft age physically fit for military service shall be exempted from such service on account of being employed under the terms of this Act. [—*Stat. L.* —.]

WAR DEPARTMENT AND MILITARY ESTABLISHMENT

Act of Sept. 2, 1914, ch. 293, as amended (War Risk Insurance Act), 889.

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CROSS-REFERENCES

See also *MILITARY ACADEMY*; *MILITIA*.

An Act To authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department.

[Act of Sept. 2, 1914, ch. 293, 38 Stat. L. 711, as amended.]

ARTICLE I.

SEC. 1. [Bureau of War Risk Insurance — director — Division of Marine and Seamen's Insurance — Division of Military and Naval Insurance — directors.] That there is established in the Treasury Department a Bureau to be known as the Bureau of War Risk Insurance, the director of which shall receive a salary at the rate of \$5,000 per annum.

That there be in such bureau a Division of Marine and Seamen's Insurance and a Division of Military and Naval Insurance in charge of a commissioner of Marine and Seamen's Insurance and a commissioner of Military and Naval Insurance, respectively, each of whom shall receive a salary of \$4,000 per annum. [38 Stat. L. 711, as amended by 40 Stat. L. 105, 398.]

This is the first section of the "War Risk Insurance Act." As originally enacted this section was as follows:

"That there is established in the Treasury Department a bureau to be known as the Bureau of War Risk Insurance, the director of which shall be entitled to a salary at the rate of \$5,000 per annum."

This section was first amended by the Act of June 12, 1917, ch. 26, § 1, 40 Stat. L. 102, but no change was made by the amendment, and the section was again amended to read as in the text by the Act of Oct. 6, 1917, ch. 105, § 1, 40 Stat. L. 398.

Preceding the enacting clause of this section, as originally enacted, was the following preamble:

"Whereas the foreign commerce of the United States is now greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against the risks of war; and

"Whereas it is deemed necessary and expedient that the United States shall temporarily provide for the export shipping trade of the United States adequate facilities for the insurance of its commerce against the risks of war: Therefore," etc.

SEC. 2. [Powers — risks insured against.] That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, cargoes shipped or to be shipped therein, and personal effects of the masters, officers, and crews thereof against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers or importers in American vessels, or the masters, officers, or crews of such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms.

The Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States, as further provided in section three a, of masters, officers, and crews of American merchant vessels against loss of life or personal injury by the risks of war, and for compensation during detention following capture by enemies of the United States whenever it shall appear to the Secretary that in any trade the need for such insurance exists. [*38 Stat. L. 711, as amended by 40 Stat. L. 102.*]

This section was amended to read as given in the text by the Act of June 12, 1917, ch. 26, § 2. As originally enacted it was as follows:

"SEC. 2. That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

See section 12 of this Act, *infra*, p. 896.

SEC. 2a. [Reinsurance.] That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to make provisions for the reinsurance by the United States of vessels of foreign friendly flags or their cargoes, or both, when such vessels or their cargoes are insured by the Government of any country which is at war with an enemy of the United States; and, further, to reinsure with the Governments of any countries which are at war with an enemy of the United States American vessels and their cargoes. [*40 Stat. L. 103.*]

This new section 2a was added to this Act by the Act of June 12, 1917, ch. 26, § 3. See section 12 of this Act, *infra*, p. 896.

SEC. 2b. [Vessels of foreign friendly flags — masters, crews, shippers, or importers — cargoes.] That when it appears to the Secretary of the

Treasury that vessels of foreign friendly flags, or their masters, officers, or crews, or shippers, or importers in such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms, the Bureau of War Risk Insurance, with the approval of the Secretary, is hereby authorized to make provisions for the insurance by the United States of (1) such vessels of foreign friendly flags, their freight and passage moneys, and personal effects of the masters, officers, and crews thereof against the risks of war when such vessels are chartered or operated by the United States Shipping Board or its agent, or chartered by any person a citizen of the United States, and (2) the cargoes to be shipped in such vessels of foreign friendly flags, whether or not they are so chartered. Such insurance on the vessel, however, is authorized only when the United States Shipping Board or its agent operates the vessel or the charterers are, by the terms of the charter party or contract with the vessel owners, required to assume the war risk or provide insurance protecting the vessel owners against war risk during the term of the charter or hire of the vessel.

The Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is also hereby authorized to insure the masters, officers, and crews of vessels operated or chartered as aforesaid against the loss of life or personal injury by the risk of war and for compensation during the detention following capture by enemies of the United States, whenever it appears to the Secretary that the owners, operators, or charterers of such vessels are unable, in any trade, to secure such insurance on reasonable terms. [40 Stat. L. —.]

This new section 2b was added by the Act of July 11, 1918, § 1.

SEC. 3. [Forms of policy — rates of premiums — proceeds.] That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish forms of war-risk policies and to fix reasonable rates of premium for the policies which it is authorized to issue under this Act, which rates shall be subject to such change to each port and for each class as the Secretary shall find may be required by the circumstances. All proceeds of the aforesaid premium and from salvage which have been or are hereafter received shall be covered into the Treasury of the United States to the credit of the Bureau of War Risk Insurance, and in addition to all other appropriations made under this Act are hereby permanently appropriated for the purpose of paying losses and return premiums accruing under this Act. [38 Stat. L. 711, as amended by 40 Stat. L. 103.]

This section was amended to read as given in the text by the Act of June 12, 1917, ch. 26, § 3. As originally enacted it was as follows:

"SEC. 3. That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels, their freight and passage moneys and cargoes against war risks, which rates shall be subject to such change, to each port and for each class, as the Secretary shall find may be required by the circumstances. The proceeds of the aforesaid premiums when received shall be covered into the Treasury of the United States."

The Act of Aug. 11, 1916, ch. 332, § 2, 39 Stat. L. 514, was as follows:

"SEC. 2. That all moneys received from premiums and from salvage shall be covered into the Treasury to the credit of the appropriation made for the payment of losses and be available for the purposes thereof."

Identical provisions were made by the Act of March 3, 1917, ch. 169, § 3, 39 Stat. L. 1131. But both of these Acts were repealed by the Act of June 12, 1917, ch. 26, § 12, 40 Stat. L. 105, and these provisions incorporated in the text section as amended by said Act.

See section 12 of this Act, *infra*, p. 896.

SEC. 3a. [Insurance of masters, officers, and crews — duties of owners — amounts — claims.] That whenever it shall appear to the Secretary of the Treasury that the effecting of such insurance is desirable in the national interest in the case of vessels engaged in any trade, the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks as well as for compensation during detention by an enemy of the United States following capture.

Such insurance shall be effected either with the Bureau of War Risk Insurance or in insurance companies, and on terms satisfactory to the Secretary of the Treasury.

Such insurance shall provide, and the Bureau of War Risk Insurance is authorized to write policies so providing —

(a) In case of death, permanent disability which prevents the person injured from performing any and every kind of duty pertaining to his occupation, or the loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, for the payment of an amount equivalent to one year's earnings, or to twelve times the monthly earnings of the insured, as fixed in the articles for the voyage (hereinafter referred to as the principal sum), but in no case shall such amount be more than \$5,000 or less than \$1,500;

(b) In case of any of the following losses, for the payment of the percentage of the principal sum indicated in the following tables:

One hand, fifty per centum;

One arm, sixty-five per centum;

One foot, fifty per centum;

One leg, sixty-five per centum;

One eye, forty-five per centum;

Total destruction of hearing, fifty per centum;

That the Bureau of War Risk Insurance may include in its policy undertakings to pay specified percentages of the principal sum for other losses or disabilities; and

(c) In case of detention by an enemy of the United States, following capture, for the payment during the continuance of such detention of compensation at the same rate as the earnings of the insured immediately preceding such detention, to be determined in substantially the same manner as provided in subdivision (a) of this section.

The aggregate payments under this section in respect to any one person shall not exceed the amount of the principal sum.

Payments provided for in this section shall be made only to the master, officer, or member of the crew concerned, except that a payment for loss of life shall be made to the estate of the insured for distribution to his family free from liability of debt, and payment on account of detention by an enemy following capture shall be made to dependents of the person detained, if designated by him.

No claim under this section shall be valid unless made by the master, officer, or member of the crew concerned, or his estate, or a person designated under this section, within two years after the date on which the President suspends the operations of this Act in so far as it authorizes insurance by the United States. [40 Stat. L. 103.]

This new section 3a was added to this Act by the Act of June 12, 1917, ch. 26, § 5. See section 12 of this Act, *infra*, p. 896.

SEC. 3b. [Failure of owners to effect insurance — insurance by Bureau — penalty.] That in the event of failure of the owner of any vessel to effect insurance of the master, officers, and crew of such vessel prior to sailing, in accordance with section three a of this Act, the Secretary of the Treasury is hereby authorized to effect such insurance with the Bureau of War Risk Insurance at the expense of the owner of such vessel, and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding \$1,000. The amount of such premium, with interest and of the penalty and of all costs, shall be a lien on the vessel. [40 Stat. L. 104.]

This new section 3b was added to this Act by the Act of June 12, 1917, ch. 26, § 6. See section 12 of this Act, *infra*, p. 896.

SEC. 4. [Rules and regulations.] That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, shall have power to make any and all rules and regulations necessary for carrying out the purposes of this Act. [38 Stat. L. 711.]

See section 12 of this Act, *infra*, p. 896.

SEC. 5. [Advisory board — duties — compensation — claims.] That the Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war-risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed \$20 a day each while actually employed. He is likewise authorized to appoint two persons skilled in the practice of accident insurance for the purpose of assisting the Bureau of War Risk Insurance in the adjustment of claims for death, personal injury, or detention; the compensation of persons so appointed to be determined by the Secretary of the Treasury, but not to exceed \$20 a day each while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the district court of the United States, sitting in admiralty, in the district in which the claimant or his agents may reside. The Secretary of the Treasury is, in his judgment, authorized to compromise the claim either before or after the institution of an action therein. [38 Stat. L. 711, as amended by 40 Stat. L. 104; 40 Stat. L. —.]

This section was amended to read as here given by the Act of June 12, 1917, ch. 26, § 7, and the Act of July 11, 1918, ch. —, § 2. As originally enacted it was as follows:

“SEC. 5. That the Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war risk insurance, for

the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed \$25 a day each, while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the District Court of the United States, sitting in admiralty, in the district in which the claimant or his agent may reside."

SEC. 5a. [Claim agents or attorneys — service in collecting claims — compensation.] No claim agent or attorney shall be entitled to receive any compensation whatever for services in the collection of claims against the Bureau of War Risk Insurance for death, personal injury, or detention, except when proceedings are taken in accordance with section five in a district court of the United States, in which case the judge shall, as a part of his determination and order, settle and determine the amount of compensation not to exceed ten per centum of amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his legal adviser or advisers, and it shall be unlawful for any lawyer or other person acting in that behalf to ask for, contract for, or receive any larger sum than the amount so fixed. [40 Stat. L. 105.]

This new section 5a was added to this Act by the Act of June 12, 1917, ch. 26, § 8. See section 12 of this Act, *infra*, p. 896.

SEC. 6. [Adjustment and payment of claims for losses.] That the Director of the Bureau of War Risk Insurance, upon the adjustment of any claims for losses in respect of which no action shall have been begun, shall, on approval of the Secretary of the Treasury, promptly pay such claim for losses to the party in interest; and the Secretary of the Treasury is directed to make provision for the speedy adjustment of claims for losses and also for the prompt notification of parties in interest of the decisions of the bureau on their claims. [38 Stat. L. 712.]

See section 12 of this Act, *infra*, p. 896.

SEC. 7. [Fund for payment of losses.] That for the purpose of paying losses and return premiums accruing under the provisions of this Act there is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$50,000,000. [38 Stat. L. 712, as amended by 40 Stat. L. 105.]

This section was amended to read as here given by the Act of June 12, 1917, ch. 26, § 9. As originally enacted it was as follows:

"SEC. 7. That for the purpose of paying losses accruing under the provisions of this Act there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$5,000,000."

This section had previously been amended by the Act of March 3, 1917, ch. 169, § 2, 39 Stat. L. 1131, the amendment increasing the sum appropriated to \$15,000,000, but the amending Act was repealed by the Act of June 12, 1917, ch. 26, § 12, 40 Stat. L. 105, section 9 of which Act amended the section to read as given in the text, as previously stated.

See section 12 of this Act, *infra*, p. 896.

SEC. 8. [Fund for defraying expenses.] That there is hereby appropriated, for the purpose of defraying the expenses of the establishment

and maintenance of the Bureau of War Risk Insurance, including the payment of salaries herein authorized and other personal services, and for the purchase of necessary books of reference, periodicals, etc., that may be paid for in advance out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$250,000. [38 Stat. L. 712, as amended by 40 Stat. L. 105.]

This section was amended to read as given in the text by the Act of June 12, 1917, ch. 26, § 10. As originally enacted it was as follows:

"SEC. 8. That there is hereby appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the Bureau of War Risk Insurance, including the payment of salaries herein authorized and other personal services in the District of Columbia, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$100,000."

SEC. 9. [Suspension of Act — outstanding insurance or claims — "end of the war" defined.] That the President is authorized whenever in his judgment the necessity of further war insurance by the United States shall have ceased to exist to suspend the operation of this Act, in so far as the Division of Marine and Seamen's Insurance is concerned, which suspension shall be made in any event within six months after the end of the war, but shall not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Division of Marine and Seamen's Insurance may, in the discretion of the President, be continued in existence for a period not exceeding three years after such suspension.

The words "end of the war" as used herein shall be deemed to mean the date of proclamation of exchange of ratification of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act. [38 Stat. L. 712, as amended by 40 Stat. L. 105; 40 Stat. L. —.]

This section was amended to read as here given by the Act of June 12, 1917, ch. 26, § 11, and the Act of July 11, 1918, ch. —, § 3. As originally enacted it was as follows:

"SEC. 9. That the President is authorized whenever, in his judgment, the necessity of further war insurance by the United States shall have ceased to exist, to suspend the operations of this Act in so far as it authorizes insurance by the United States against loss or damage by risks of war, which suspension shall be made, at any event, within two years after the passage of this Act, but shall not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Bureau of War Risk Insurance may, in the discretion of the President, be continued in existence a further period not exceeding one year."

This section had previously been amended so as to require the suspension of the operations of the Act within three years from the date of its approval by the Act of Aug. 11, 1916, ch. 332, § 1, 39 Stat. L. 514, and had again been amended so as to require the suspension of the operation of the Act within four years from the date of its approval, by the Act of March 3, 1917, ch. 169, § 1, 39 Stat. L. 1131. But these Acts were both repealed by the Act of June 12, 1917, ch. 26, § 12, 40 Stat. L. 105.

SEC. 10. [Report of expenditures.] That a detailed statement of all expenditures under this Act and of all receipts hereunder shall be submitted to Congress at the beginning of each regular session. [38 Stat. L. 712.]

SEC. 11. [Time of taking effect.] That this Act shall take effect from and after its passage. [38 Stat. L. 712.]

SEC. 12. [Construction of sections — application to Division of Marine Insurance.] That sections two to seven, inclusive, and section nine, shall be construed to refer only to the Division of Marine and Seamen's Insurance. [40 Stat. L. 398.]

The foregoing section 12, the following sections 13-26, article II embracing sections 200-210, article III embracing sections 300-314, and article IV embracing sections 400-405, were added to this Act of Sept. 2, 1914, ch. 293, as previously amended, as new sections, by the Act of Oct. 6, 1917, ch. 105, § 2, entitled "An Act To amend an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department' approved September second, nineteen hundred and fourteen, and for other purposes." Section 1 of the amendatory Act amended section 1 of this Act, *supra*, p. 889. Section 3 of the amendatory Act authorized the appointment of generals and is given *infra*, p. 1033.

Sections 2-7 and 9 of this Act, mentioned in this section, are given *supra*, p. 890 *et seq.*

SEC. 13. [Director — powers and duties — regulations — attorney's fees.] That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, and shall decide all questions arising under the Act, except as otherwise provided in section five. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director, subject to the general direction of the Secretary of the Treasury. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of allowance, allotment, compensation, or insurance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards: *Provided, however,* That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers shall not exceed \$3 in any one case: *And provided further,* That no claim agent or attorney shall be recognized in the presentation or adjudication of claims under articles two, three, and four, except that in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides, and that whenever judgment shall be rendered in an action brought pursuant to this provision the court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed five per centum of the amount recovered, to be paid by the claimant in behalf of whom such proceedings were instituted to his

attorney, said fee to be paid out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid.

Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than \$500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment. [40 Stat. L. 399, as amended by 40 Stat. L. —.]

See the note to the preceding section 12 of this Act.

This section was amended to read as given in the text by the Act of May 20, 1918, ch. —, § 1, entitled "An Act To amend an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen," and an Act in amendment thereto, approved October sixth, nineteen hundred and seventeen."

As originally enacted it was as follows:

"SEC. 13. That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, and shall decide all questions arising under the Act, except as otherwise provided in sections five and four hundred and five. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director, subject to the general direction of the Secretary of the Treasury. The director shall adopt reasonable and proper rules to govern the procedure of the divisions, to regulate the matter of the compensation, if any, but in no case to exceed ten per centum, to be paid to claim agents and attorneys for services in connection with any of the matters provided for in articles two, three, and four, and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of allowance, allotment, compensation, or insurance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the method of making investigations and medical examinations, and the manner and form of adjudications and awards."

SEC. 14. [Employees — surgeons of Army and Navy — advisory board.]

That the bureau and its divisions shall have such deputies, assistants, actuaries, clerks, and other employees as may be from time to time provided by Congress. The bureau shall, by arrangement with the Secretary of War and the Secretary of the Navy, respectively, make use of the services of surgeons in the Army and Navy. The Secretary of the Treasury is authorized to establish an advisory board consisting of three members skilled in the practice of insurance against death or disability for the purpose of assisting the Division of Military and Naval Insurance in fixing premium rates and in the adjustment of claims for losses under the contracts of insurance provided for in article four and in adjusting claims for compensation under article three; compensation for the persons so appointed to be determined by the Secretary of the Treasury, but not to exceed \$20 a day each while actually employed. [40 Stat. L. 399.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 15. [Compelling attendance of witnesses — production of books, etc.— information from Government reports, etc.— disobedience of subpoena — contempt — mileage.] That for the purposes of this Act, the

director, commissioners, and deputy commissioners shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths and to examine witnesses upon any matter within the jurisdiction of the bureau. The director may obtain such information and such reports from officials and employees of the departments of the Government of the United States and of the States as may be agreed upon by the heads of the respective departments. In case of disobedience to a subpoena, the bureau may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or other person, issue an order requiring such corporation or other person to appear before the bureau, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person so required to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district court of the United States. [40 Stat. L. 399.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 16. [Annual estimates.] That the director shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the bureau. [40 Stat. L. 400.]

See the note to section 12 of this Act, *supra*, p. 896.

A detailed report of expenditures and receipts under this Act was required by section 10 thereof, *supra*, p. 895.

SEC. 17. [Appropriation for expenses, etc.—appointment of employees.] That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$100,000, for the payment of all expenses incident to the work authorized under this Act, including salaries of the director and commissioners and of such deputies, assistants, accountants, experts, clerks, and other employees in the District of Columbia or elsewhere, as the Secretary of the Treasury may deem necessary, traveling expenses, rent and equipment of offices, typewriters and exchange of same, purchase of law books and books of reference, printing and binding to be done at the Government Printing Office, and all other necessary expenses. With the exception of the director, the commissioners, and such special experts as the Secretary of the Treasury may from time to time find necessary for the conduct of the work of the bureau, all employees of the bureau shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law. Such fees, allowances, and salaries shall be the same as are paid for similar services in other departments of the Government. [40 Stat. L. 400.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 18. [Appropriation for payment of family allowance — payments.] That there is hereby appropriated from any money in the Treasury not otherwise appropriated, the sum of \$141,000,000, to be known as the military and naval family allowance appropriation, for the payment of the family allowances provided by Article II. Payments out of this appropriation shall be made upon and in accordance with the awards by the Commissioner of the Division of Military and Naval Insurance. [40 Stat. L. 400.]

See the notes to section 12 of this Act, *supra*, p. 896.

Article II of this Act, mentioned in this section, is given *infra*, p. 903.

SEC. 19. [Appropriation for funeral expenses, supplies, etc.—payments.] That there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$12,150,000, to be known as the military and naval compensation appropriation, for the payment of the compensation, funeral expenses, services, and supplies provided by Article III. Payments out of this appropriation shall be made upon and in accordance with awards by the director. [40 Stat L. 400.]

See the notes to section 12 of this Act, *supra*, p. 896.

Article III of this Act, mentioned in this section, is given *infra*, p. 908.

SEC. 20. [Appropriation for military and naval insurance — premiums credited — payments.] That there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$23,000,000, to be known as the military and naval insurance appropriation. All premiums that may be collected for the insurance provided by the provisions of Article IV shall be deposited and covered into the Treasury to the credit of this appropriation.

Such sum, including all premium payments, is hereby made available for the payment of the liabilities of the United States incurred under contracts of insurance made under the provisions of Article IV. Payments from this appropriation shall be made upon and in accordance with awards by the director. [40 Stat. L. 400.]

See the notes to section 12 of this Act, *supra*, p. 896.

Article IV of this Act, mentioned in this section, is given *infra*, p. 916.

SEC. 21. [Military and naval pay deposit fund.] That there shall be set aside as a separate fund in the Treasury, to be known as the military and naval pay deposit fund, all sums held out of pay as provided by section two hundred and three of this Act. Such fund, including all additions, is hereby made available for the payment of the sums so held and deposited, with interest, as provided in section two hundred and three, and the amount necessary to pay interest is hereby appropriated. [40 Stat. L. 400.]

See the notes to section 12 of this Act, *supra*, p. 896.

Section 203 of this Act, mentioned in this section, is given *infra*, p. 904.

SEC. 22. [Marriage — how proved — definitions.] That for the purpose of this amendatory Act the marriage of the claimant to the person on account of whom the claim is made shall be shown —

- (1) By a duly verified copy of a public or church record; or
- (2) By the affidavit of the clergyman or magistrate who officiated; or
- (3) By the testimony of two or more eyewitnesses to the ceremony; or
- (4) By a duly verified copy of the church record of baptism of the children; or

(5) By the testimony of two or more witnesses who know that the parties lived together as husband and wife, and were recognized as such, and who shall state how long, within their knowledge, such relation continued: *Provided*, That marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in compensation or insurance cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to compensation or insurance accrued; and the open and notorious illicit cohabitation of a widow who is a claimant shall operate to terminate her right to compensation or insurance from the commencement of such cohabitation: *Provided further*, That for the purpose of the administration of Article II of this Act marriage shall be conclusively presumed, in the absence of proof, that there is a legal spouse living, if the man and woman have lived together in the openly acknowledged relation of husband and wife during the two years immediately preceding the date of the declaration of war, or the date of enlistment or of entrance into or employment in active service in the military or naval forces of the United States if subsequent to such declaration.

In Articles II, III, and IV of this Act unless the context otherwise requires —

- (1) [**“ Child ” defined.**] The term “ child ” includes —
 - (a) A legitimate child.
 - (b) A child legally adopted more than six months before the enactment of this amendatory Act or before enlistment or entrance into or employment in active service in the military or naval forces of the United States, whichever of these dates is the later.
 - (c) A stepchild, if a member of the man’s household.
 - (d) An illegitimate child, but, as to the father, only, if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child’s support, and if such child, if born after December thirty-first, nineteen hundred and seventeen, shall have been born in the United States, or in its insular possessions.
- (2) [**“ Grandchild ” defined.**] The term “ grandchild ” means a child as above defined of a child as above defined.
- (3) [**“ Child ” and “ grandchild ” — term limited.**] Except as used in section four hundred and one and in section four hundred and two the terms “ child ” and “ grandchild ” are limited to unmarried persons either (a) under eighteen years of age, or (b) of any age, if insane, idiotic, or otherwise permanently helpless.
- (4) [**“ Parent ” defined.**] The term “ parent ” includes a father, mother, grandfather, grandmother, father through adoption, mother through adoption, stepfather, and stepmother, either of the person in the service or of the spouse.
- (5) [**“ Brother ” and “ Sister ” defined.**] The terms “ brother ” and “ sister ” include brothers and sisters of the half blood as well as those of

the whole blood, stepbrothers and stepsisters, and brothers and sisters through adoption.

(6) [**"Commissioned officer" defined.**] The term "commissioned officer" includes a warrant officer, but includes only an officer in active service in the military or naval forces of the United States.

(7) [**"Man" and "enlisted man" defined.**] The terms "man" and "enlisted man" mean a person, whether male or female, and whether enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, and include noncommissioned and petty officers, and members of training camps authorized by law.

(8) [**"Enlistment" defined.**] The term "enlistment" includes voluntary enlistment, draft, and enrollment in active service in the military or naval forces of the United States.

(9) [**"Commissioner" defined.**] The term "commissioner" means the Commissioner of Military and Naval Insurance.

(10) [**"Injury" defined.**] The term "injury" includes disease.

(11) [**"Pay" defined.**] The term "pay" means the pay for service in the United States according to grade and length of service, excluding all allowances.

(12) [**"Military or naval forces" defined.**] The term "military or naval forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy. [40 Stat. L. 400, as amended by 40 Stat. L. —.]

See the note to section 12 of this Act, *supra*, p. 896.

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 1, the amendment consisting of the addition of the words "father through adoption, mother through adoption" in subdivision (4).

For R. S. sec. 4705, mentioned in this section, see PENSIONS, vol. 5, p. 631.

SEC. 23. [**Payment to guardian, curator, etc., of minor or person mentally incompetent, etc.**] That when, by the terms of this amendatory Act, any payment is to be made to a minor, other than a person in the military or naval forces of the United States, or to a person mentally incompetent, such payment shall be made to the person who is constituted guardian or curator by the laws of the State or residence of claimant, or is otherwise legally vested with responsibility or care of the claimant. [40 Stat. L. 402.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 24. [**Duties of Bureau with respect of insurance of persons in Military or Naval Service.**] That the Bureau of War Risk Insurance, so far as practicable, shall upon request furnish information to and act for persons in the military or naval service, with respect to any contracts of insurance whether with the Government or otherwise, as may be prescribed by regulations. Said bureau may upon request procure from and keep a record of the amount and kind of insurance held by every commissioned and appointive officer and of every enlisted man in the military or naval service of the United States, including the name and principal place of business of the company, society, or organization in which such insur-

ance is held, the date of the policy, amount of premium, name and relationship of the beneficiary, and such other data as may be deemed of service in protecting the interests of the insured and beneficiaries. [40 Stat. L. 402.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 25. [Making false claims for allowances, etc.—penalty.] That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this Act or by regulation made under this Act, makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both. [40 Stat. L. 402.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 26. [Fraudulently accepting payment of allowances, etc.—penalty.] That if any person entitled to payment of family allowance or compensation under this Act, whose right to such payment under this Act ceases upon the happening of any contingency, thereafter fraudulently accepts any such payment, he shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or both. [40 Stat. L. 402.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 27. [Improperly obtaining allotment, insurance, etc.—penalty.] That whoever shall obtain or receive any money, check, allotment, family allowance, compensation, or insurance under Articles II, III, or IV of this Act, without being entitled thereto, with intent to defraud the United States or any person in the military or naval forces of the United States, shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or both. [40 Stat. L. —.]

The foregoing section 27, and the following sections 28, 29, 30, were added to this Act by the Act of June 25, 1918, ch. —, § 2.

SEC. 28. [Assignment of allotments, etc.—taxation — claims by United States.] That the allotments and family allowances, compensation, and insurance payable under Articles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Articles II, III, or IV; and shall be exempt from all taxation: *Provided*, That such allotments and family allowances, compensation, and insurance shall be subject to any claims which the United States may have, under Articles II, III, and IV, against the person on whose account the allotments and family allowances, compensation, or insurance is payable. [40 Stat. L. —.]

See the note to the preceding section 27 of this Act.

SEC. 29. [Effect of other than honorable discharge.] That the discharge or dismissal of any person from the military or naval forces on the ground that he is an enemy alien, conscientious objector, or a deserter, or as guilty

of mutiny, treason, spying, or any offense involving moral turpitude, or willful and persistent misconduct shall terminate any insurance granted on the life of such person under the provisions of Article IV, and shall bar all rights to any compensation under Article III or any insurance under Article IV. [40 Stat. L. —.]

See the note to section 27 of this Act, *supra*, p. 902.

SEC. 30. [Title of Act.] That this Act may be cited as the war-risk insurance Act. [40 Stat. L. —.]

See the note to section 27 of this Act, *supra*, p. 902.

ARTICLE II.

ALLOTMENTS AND FAMILY ALLOWANCES.

SEC. 200. [Application of article.] That the provisions of this article shall apply to all enlisted men in the military or naval forces of the United States, except the Philippine Scouts, the insular force of the navy, and the Samoan native guard and band of the Navy. [40 Stat. L. 402, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 3. As originally enacted it was as follows:

"SEC. 200. That the provisions of this article shall apply to all enlisted men in the military or naval forces of the United States."

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 201. [Allotment of pay — compulsory or voluntary — waiver — amount.] That allotment of pay shall, subject to the conditions limitations, and exceptions hereinafter specified, be compulsory as to wife, a former wife divorced who has not remarried and to whom alimony has been decreed, and a child, and voluntary as to any other person; but on the written consent of the wife or former wife divorced, supported by evidence satisfactory to the bureau of her ability to support herself and the children in her custody, the allotment for her and for such children may be waived; and on the enlisted man's application or otherwise for good cause shown, exemption from the allotment may be granted upon such conditions as may be prescribed by regulations.

The monthly compulsory allotment shall be \$15. For a wife living separate and apart from her husband under court order or written agreement, or for a former wife divorced, the monthly compulsory allotment shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her, and for an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree.

If there is a compulsory allotment for a wife or child, then a former wife divorced who has not remarried and to whom alimony has been decreed, shall not be entitled to a compulsory allotment, but shall be entitled to a family allowance as hereinafter provided. [40 Stat. L. 402, as amended by 40 Stat. L. —.]

The second and third paragraphs of this section were amended to read as given in the text by the Act of June 25, 1918, ch. —, § 4. As originally enacted they were as follows:

"The monthly compulsory allotment shall be in an amount equal to the family allowance hereinafter specified except that it shall not be more than one-half the pay, or less than \$15; but for a wife living separate and apart under court order or written agreement or for a former wife divorced, it shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree.

"If there be an allotment for a wife or child, a former wife divorced and who has not remarried shall be entitled to a compulsory allotment only out of the difference, if any, between the allotment for the wife or child or both and one-half of the pay."

Said Act of June 25, 1918, ch. —, § 9, provided that said amendatory section 4 should take effect on July 1, 1918.

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 202. [Allotment of pay remaining after compulsory allotment.]

That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively. [40 Stat. L. 403.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 203. [Deposit of unallotted part of one-half of pay — interest — disposition.] That in case one-half of an enlisted man's monthly pay is not allotted, regulations to be made by the Secretary of War and the Secretary of the Navy, respectively, may require, under such circumstances and conditions as may be prescribed in such regulations, that any proportion of such one-half pay as is not allotted shall be deposited to his credit, to be held during such period of his service as may be prescribed. Such deposit shall bear interest at the same rate as United States bonds bear for the same period, and, when payable, shall be paid principal and interest to the enlisted man, if living, otherwise to any beneficiary or beneficiaries he may have designated, or if there be no such beneficiary, then to the person or persons who, under the laws of the State of his residence, would be entitled to his personal property in case of intestacy. [40 Stat. L. 403, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 5. As originally enacted it was as follows:

"Sec. 203. That in case one-half of an enlisted man's monthly pay is not allotted, regulations to be made by the Secretary of War and the Secretary of the Navy, respectively, may require, under such circumstances and conditions as may be prescribed in such regulations, that any proportion of such one-half pay as is not allotted shall be deposited to his credit, to be held during such period of his service as may be prescribed. Such deposits shall bear interest at the rate of four per centum per annum, with semiannual rests and, when payable, shall be paid principal and interest to the enlisted man, if living, otherwise to any beneficiary or beneficiaries as he may have designated, or if there be no such beneficiary, then to the person or persons who would under the laws of the State of his residence be entitled to his personal property in case of intestacy."

See the note to section 12 of this Act, *supra*, p. 896.

The sums held out of pay as provided by this section are to be set aside as a separate fund in the Treasury, to be known as the military and naval pay deposit fund by section 21 of this Act, *supra*, p. 899.

SEC. 204. [Family allowance — amount.] That a family allowance of not exceeding \$50 per month shall be granted and paid by the United

States upon written application to the bureau by such enlisted man or by or on behalf of any prospective beneficiary, in accordance with and subject to the conditions, limitations, and exceptions hereinafter specified.

The family allowance shall be paid from the time of enlistment to death in or one month after discharge from the service, but not for more than one month after the termination of the present war emergency. No family allowance shall be made for any period preceding November first, nineteen hundred and seventeen. The payment shall be subject to such regulations as may be prescribed relative to cases of desertion and imprisonment and of missing men.

Subject to the conditions, limitations, and exceptions hereinabove and hereinafter specified, the family allowance payable per month shall be as follows:

Class A. In the case of a man to his wife (including a former wife divorced) and to his child or children —

- (a) If there is a wife but no child, \$15;
- (b) If there is a wife and one child, \$25;
- (c) If there is a wife and two children, \$32.50, with \$5 per month additional for each additional child;
- (d) If there is no wife, but one child, \$5;
- (e) If there is no wife, but two children, \$12.50;
- (f) If there is no wife, but three children, \$20;
- (g) If there is no wife, but four children, \$30, with \$5 per month additional for each additional child;
- (h) If there is a former wife divorced who has not remarried and to whom alimony has been decreed, \$15.

Class B. In the case of a man or woman to a grandchild, a parent, brother, or sister —

- (a) If there is one parent, \$10;
- (b) If there are two parents, \$20;
- (c) If there is a grandchild, brother, sister, or additional parent, \$5 for each.

In the case of a woman, the family allowances for a husband and children shall be in the same amounts, respectively, as are payable, in the case of a man, to a wife and children, provided she makes a voluntary allotment of \$15 as a basis therefor, and provided, further, that dependency exists as required in section two hundred and six. [40 Stat. L. 403, as amended by 40 Stat. L. —.]

The third paragraph of this section was amended to read as given in the text, and the fourth paragraph was added, by the Act of June 25, 1918, ch. —, § 6. As originally enacted paragraph 3 was as follows:

"Class A. In the case of a man, to his wife (including a former wife divorced) and to his child or children:

- "(a) If there be a wife but no child, \$15.
- "(b) If there be a wife and one child, \$25.
- "(c) If there be a wife and two children, \$32.50, with \$5 per month additional for each additional child.
- "(d) If there be no wife, but one child, \$5.
- "(e) If there be no wife, but two children, \$12.50.
- "(f) If there be no wife, but three children, \$20.
- "(g) If there be no wife, but four children, \$30, with \$5 per month additional for each additional child.

"Class B. In the case of a man or woman, to a grandchild, a parent, brother, or sister:

- "(a) If there be one parent, \$10.
- "(b) If there be two parents, \$20.
- "(c) For each grandchild, brother, sister, and additional parent, \$5.
- "In the case of a woman, to a child or children:
- "(d) If there be one child, \$5.
- "(e) If there be two children, \$12.50.
- "(f) If there be three children, \$20.
- "(g) If there be four children, \$30, with \$5 per month additional for each additional child."

Said Act of June 25, 1918, ch. —, § 9, provided that said amendatory section 6 should take effect on July 1, 1918.

See the note to section 12 of this Act, *supra*, p. 896.

An appropriation for the payment of allowances provided by this article II was made by section 18 of this Act, *supra*, p. 899.

Provisions relating to evidence of marriage, and defining various beneficiaries, were made by section 22 of this Act, *supra*, p. 899.

SEC. 205. [Family allowance to members of Class A—when paid.]

That family allowances for members of Class A shall be paid only if and while a compulsory allotment is made to a member or members of such class. The monthly family allowance to a former wife divorced shall be payable only out of the difference, if any, between the monthly family allowance to the other members of Class A and the sum of \$50, and only then if alimony shall have been decreed to her. For a wife living separate and apart under court order or written agreement or to a former wife divorced the monthly allowance, together with the allotment, if any, shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree. [40 Stat. L. 404.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 206. [Family allowance to members of Class B—when paid.]

That family allowances to members of class B shall be paid only if and while the members are dependent in whole or in part on the enlisted man, and then only if and while the enlisted man makes a monthly allotment of his pay for such members in the following amounts:

(a) If an enlisted man is not making a compulsory allotment for class A the allotment for class B required as a condition to the family allowance shall be \$15;

(b) If an enlisted man is making a compulsory allotment for class A the additional allotment for class B required as a condition to the family allowance shall be \$5, or if a woman is making an allotment of \$15 for a dependent husband or child the additional allotment for the other members of class B required as a condition to the family allowance shall be \$5. [40 Stat. L. 404, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 7. As originally enacted it was as follows:

"Sec. 206. That family allowances to members of Class B shall be granted only if and while the member is dependent in whole or in part on the enlisted man, and then only if and while the enlisted man makes a monthly allotment of his pay for such member or members equal to the amount of the monthly family allowance as hereinabove specified, except that—

"(a) The maximum monthly allotment so required to be made to members of Class B shall be one-half of his pay.

"(b) If he is making no allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be \$15 per month.

"(c) If he is making the compulsory allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be one-seventh of his pay, but not less than \$5 per month.

"On the enlisted man's application, or otherwise for good cause shown, exemption from this additional allotment under Class B as a condition to the allowance may be granted, upon such conditions as may be prescribed by regulations."

Said Act of June 25, 1918, ch. —, § 9, provided that said amendatory section 7 should take effect on July 1, 1918.

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 207. [Family allowance to members of Class B — amount — limitations.] That the amount of the family allowance to members of Class B shall be subject to each of the following limitations:

(a) If an allowance is paid to one or more beneficiaries of Class A, the total allowance to be paid to the beneficiaries of Class B shall not exceed the difference between the allowance paid to the beneficiaries of Class A and the sum of \$50.

(b) The total monthly allowance to beneficiaries of Class B added to the enlisted man's monthly allotment to them shall not exceed the average sum habitually contributed by him to their support monthly during the period of dependency but not exceeding a year immediately preceding his enlistment or the enactment of this amendatory Act. [40 Stat. L. 404.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 208. [Apportionment between members of Class A and Class B.] That as between the members of Class A and as between the members of Class B, the amount of the allotment and family allowance shall be apportioned as may be prescribed by regulations. [40 Stat. L. 404.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 209. [Payment of allotments and allowances.] The War and Navy Departments, respectively, shall pay over to the Treasury Department monthly the entire amount of such allotments for distribution to the beneficiaries, and the allotments and family allowances shall be paid by the bureau to or for the beneficiaries. [40 Stat. L. 404.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 210. [Investigation of applications for family allowances.] That upon receipt of any application for family allowance the commissioner shall make all proper investigations and shall make an award, on the basis of which award the amount of the allotments to be made by the man shall be certified to the War Department or Navy Department, as may be proper. Whenever the commissioner shall have reason to believe that an allowance has been improperly made or that the conditions have changed, he shall investigate and reinvestigate and may modify the award. The amount of each monthly allotment and allowance shall be determined according to the family conditions existing on the first day of the month. [40 Stat. L. 404, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 8. As originally enacted it was as follows:

"SEC. 210. That upon receipt of any application for family allowance the commissioner shall make all proper investigations and shall make an award, on the basis of

which award the amount of the allotments to be made by the man shall be certified to the War Department or Navy Department, as may be proper. Whenever the commissioner shall have reason to believe that an allowance has been improperly made or that the conditions have changed, he shall investigate or reinvestigate and may modify the award. The amount of each monthly allotment and allowance shall be determined according to the conditions then existing."

Said Act of June 25, 1918, ch. —, § 9, provided that said amendatory section 8 should take effect on July 1, 1918.

See the notes to section 12 of this Act, *supra*, p. 896.

ARTICLE III.

COMPENSATION FOR DEATH OR DISABILITY.

SEC. 300. [Compensation for death or disability.] That for death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or enlisted man or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) when employed in the active service under the War Department or Navy Department, the United States shall pay compensation as hereinafter provided; but no compensation shall be paid if the injury or disease has been caused by his own willful misconduct: *Provided*, That for the purposes of this section said officer, enlisted man, or other member shall be held and taken to have been in sound condition when examined, accepted, and enrolled for service: *Provided further*, That this section, as amended, shall be deemed to become effective as of October sixth, nineteen hundred and seventeen. [40 Stat. L. 405, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 10. As originally enacted it was as follows:

"SEC. 300. That for death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or enlisted man or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) when employed in the active service under the War Department or Navy Department, the United States shall pay compensation as hereinafter provided; but no compensation shall be paid if the injury or disease has been caused by his own willful misconduct."

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 301. [Compensation for death — amount — funeral expenses — duration of compensation — "widow" defined.] That if death results from injury —

If the deceased leaves a widow or child, or if he leaves a mother or father either or both dependent upon him for support, the monthly compensation shall be the following amounts:

- (a) If there is a widow but no child, \$25;
- (b) If there is a widow and one child, \$35;
- (c) If there is a widow and two children, \$42.50; with \$5 for each additional child up to two;
- (d) If there is no widow, but one child, \$20;
- (e) If there is no widow, but two children, \$30;
- (f) If there is no widow, but three children, \$40, with \$5 for each additional child up to two;
- (g) If there is a dependent mother (or dependent father), \$20, or both, \$30. The amount payable under this subdivision shall not exceed the difference between the total amount payable to the widow and children and

the sum of \$75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if the dependent mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether the dependency of the father or mother or both arises before or after the death of the person, but no compensation shall be payable if the dependency arises more than five years after the death of the person.

If the death occurs before discharge or resignation from service, the United States shall pay for burial expenses and the return of the body to his home a sum not to exceed \$100, as may be fixed by regulations.

The payment of compensation to a widow shall continue until her death or remarriage.

The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child is incapable, because of insanity, idiocy, or being otherwise permanently helpless, then during such incapacity.

Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulation.

The term "widow" as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury, and shall include a widower, whenever his condition is such that, if the deceased person were living, he would have been dependent upon her for support. [40 Stat. L. 405, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 11. As originally enacted it was as follows:

SEC. 301. That if death results from injury —

"If the deceased leaves a widow or child, or if he leaves a widowed mother dependent upon him for support, the monthly compensation shall be the following amounts:

"(a) For a widow alone, \$25.
 "(b) For a widow and one child, \$35.
 "(c) For a widow and two children, \$47.50, with \$5 for each additional child up to two.

"(d) If there be no widow, then for one child, \$20.

"(e) For two children, \$30.

"(f) For three children, \$40, with \$5 for each additional child up to two.

"(g) For a widowed mother, \$20. The amount payable under this subdivision shall not be greater than a sum which, when added to the total amount payable to the widow and children, does not exceed \$75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if such widowed mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether her widowhood arises before or after the death of the person and whenever her condition is such that if the person were living the widowed mother would have been dependent upon him for support.

"If the death occur before discharge or resignation from service, the United States shall pay for burial expenses and the return of body to his home a sum not to exceed \$100, as may be fixed by regulations.

"The payment of compensation to a widow or widowed mother shall continue until her death or remarriage.

"The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child be incapable, because of insanity, idiocy, or being otherwise permanently helpless, then during such incapacity.

"Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

"As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulations. The word 'widow' as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury."

Section 15 of said amendatory Act of June 25, 1918, ch. —, was as follows:

"SEC. 15. That where section three hundred and one of said Act is amended by striking out the provisions that a mother is entitled to compensation only when she is widowed and substitute provisions are included to the effect that compensation is payable to a dependent mother or dependent father, such substitute provisions shall be deemed to be in effect as of October sixth, nineteen hundred and seventeen."

See the notes to section 12 of this Act, *supra*, p. 896.

An appropriation for the payment of compensation, etc., provided by this article III, was made by section 19 of this Act, *supra*, p. 899.

Provisions relating to evidence of marriage, and defining various beneficiaries, were made by section 22 of this Act, *supra*, p. 899.

SEC. 302. [Compensation for disability — amount.] That if disability results from the injury —

(1) If and while the disability is total, the monthly compensation shall be the following amounts:

- (a) If the disabled person has neither wife or child living, \$30;
- (b) If he has a wife but no child living, \$45;
- (c) If he has a wife and one child living, \$55;
- (d) If he has a wife and two children living, \$65;
- (e) If he has a wife and three or more children living, \$75;
- (f) If he has no wife but one child living, \$40, with \$10 for each additional child up to two;
- (g) If he has a mother or father, either or both dependent on him for support, then in addition to the above amounts, \$10 for each;
- (h) If he is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding \$20 per month, as the director may deem reasonable: *Provided, however*, That for the loss of both feet or both hands or both eyes, or for becoming totally blind or becoming helpless and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be \$100 per month: *Provided further*, That where the rate of compensation is \$100 per month, no allowance shall be made for a nurse or attendant.

(2) If and while the disability is partial, the monthly compensation shall be a percentage of the compensation that would be payable for his total disability, equal to the degree of the reduction in earning capacity resulting from the disability, but no compensation shall be payable for a reduction in earning capacity rated at less than ten per centum.

A schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries of a permanent nature shall be adopted and applied by the bureau. Ratings may be as high as one hundred per centum. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations and not upon the impairment in earning capacity in each individual

case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of a permanent injury. The bureau shall from time to time readjust this schedule of ratings in accordance with actual experience.

(3) In addition to the compensation above provided, the injured person shall be furnished by the United States such reasonable governmental, medical, surgical, and hospital services and with such supplies, including artificial limbs, trusses, and similar appliances, as the director may determine to be useful and reasonably necessary: *Provided*, That nothing in this Act shall be construed to affect the necessary military control over any member of the military or naval establishments before he shall have been discharged from the military or naval service.

(4) The amount of each monthly payment shall be determined according to the family conditions existing on the first day of the month.

(5) Where the disabled person and his wife are not living together, or where the children are not in the custody of the disabled person, the amount of the compensation shall be apportioned as may be prescribed by regulations.

(6) The term "wife" as used in this section shall include "husband" if the husband is dependent upon the wife for support. [40 Stat. L. 406, as amended by 40 Stat. L. —.]

Subdivision (1) of this section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 12. As originally enacted it was as follows:

"(1) If and while the disability is total, the monthly compensation shall be the following amounts:

"(a) If he has neither wife nor child living, \$30.

"(b) If he has a wife but no child living, \$45.

"(c) If he has a wife and one child living, \$55.

"(d) If he has a wife and two children living, \$65.

"(e) If he has a wife and three or more children living, \$75.

"(f) If he has no wife but one child living, \$40, with \$10 for each additional child up to two.

"(g) If he has a widowed mother dependent on him for support, then, in addition to the above amounts, \$10.

"To an injured person who is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding \$20 per month, as the director may deem reasonable: *Provided, however*, That for the loss of both feet or both hands or both eyes, or for becoming totally blind or helpless and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be \$100 per month: *Provided further*, That no allowance shall be made for nurse or attendant."

Subdivision (4) of this section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 13. As originally enacted it was as follows:

"(4) The amount of each monthly payment shall be determined according to the family conditions then existing."

New subdivisions "(5)" and "(6)" were added to this section as given in the text by the Act of June 25, 1918, ch. —, § 14.

See the notes to section 12 of this Act, *supra*, p. 896, and the preceding section 301.

SEC. 303. [Medical examination of applicant for compensation for disability — expenses — effect of refusal to submit.] That every person applying for or in receipt of compensation for disability under the provisions of this article shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the director. He may have a duly qualified physician designated and paid by him present to participate in such examination. For

all examinations he shall, in the discretion of the director, be paid his reasonable traveling and other expenses and also loss of wages incurred in order to submit to such examination. If he refuses to submit himself for, or in any way obstructs, any examination, his right to claim compensation under this article shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and no compensation shall be payable for the intervening period.

Every person in receipt of compensation for disability shall submit to any reasonable medical or surgical treatment furnished by the bureau whenever requested by the bureau and the consequences of unreasonable refusal to submit to any such treatment shall not be deemed to result from the injury compensated for. [40 Stat. L. 406.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 304. [Rehabilitation, re-education, and vocational training.]

This section was added by the Act of Oct. 6, 1917, ch. 105, § 2, and repealed by the Act of June 27, 1918, ch. —, § 10 (see *ante*, p. 879). The section read as follows:

"That in cases of dismemberment, or injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, re-education, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being.

"In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until such willful failure ceases and no compensation shall be payable for the intervening period."

SEC. 305. [Review of awards.] That upon its own motion or upon application the bureau may at any time review an award, and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. [40 Stat. L. 407.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 306. [Time of death or disability as affecting compensation.] That no compensation shall be payable for death or disability which does not occur prior to or within one year after discharge or resignation from the service, except that where, after a medical examination made pursuant to regulations, at the time of discharge or resignation from the service, or within such reasonable time thereafter, not exceeding one year, as may be allowed by regulations, a certificate has been obtained from the director to the effect that the injured person at the time of his discharge or resignation was suffering from injury likely to result in death or disability, compensation shall be payable for death or disability, whenever occurring, proximately resulting from such injury. [40 Stat. L. 407.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 307. [Time of payment of compensation for death — payment for time man is reported "missing."] That compensation shall not be pay-

able for death in the course of the service until the death be officially recorded in the department under which he may be serving. No compensation shall be payable for a period during which the man has been reported "missing" and a family allowance has been paid for him under the provisions of Article II. [40 Stat. L. 407.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 308. [Compensation for death inflicted as punishment — exceptions — dismissal or dishonorable discharge.] That no compensation shall be payable for death inflicted as a lawful punishment for a crime or military offense except when inflicted by the enemy. A dismissal or dishonorable or bad conduct discharge from the service shall bar and terminate all right to any compensation under the provisions of this article. [40 Stat. L. 407.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 309. [Limitation of time for filing claim.] That no compensation shall be payable unless a claim therefor be filed, in case of disability, within five years after discharge or resignation from the service, or, in case of death during the service, within five years after such death is officially recorded in the department under which he may be serving: *Provided, however,* That where compensation is payable for death or disability occurring after discharge or resignation from the service, claim must be made within five years after such death or the beginning of such disability.

The time herein provided, may be extended by the director not to exceed one year for good cause shown. If at the time that any right accrues to any person under the provisions of this article, such person is a minor, or is of unsound mind or physically unable to make a claim, the time herein provided shall not begin to run until such disability ceases. [40 Stat. L. 407.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 310. [Compensation prior to claim.] That no compensation shall be payable for any period more than two years prior to the date of claim therefor, nor shall increased compensation be awarded to revert back more than one year prior to the date of claim therefor. [40 Stat. L. 408.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 311. [Assignment of compensation — attachment, execution and taxation — repealed.] That compensation under this article shall not be assignable, and shall be exempt from attachment and execution and from all taxation. [40 Stat. L. 408.]

See the note to section 12 of this Act, *supra*, p. 896.

This section was repealed by the Act of June 25, 1918, ch. —, § 16, — Stat. L. —.

SEC. 312. [Effect of service or retirement pay — application of pension laws.] That compensation under this article shall not be paid while the person is in receipt of service or retirement pay. The laws providing for gratuities or payments in the event of death in the service and existing

pension laws shall not be applicable after the enactment of this amendment to any person in the active military or naval service on the sixth day of October, nineteen hundred and seventeen, or who thereafter entered the active military or naval service, or to their widows, children, or their dependents, except in so far as rights under any such law have heretofore accrued.

Compensation because of disability or death of members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) shall be in lieu of any compensation for such disability or death under the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September seventh, nineteen hundred and sixteen. [40 Stat. L. 408, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 17. As originally enacted it was as follows:

"SEC. 312. That compensation under this article shall not be paid while the person is in receipt of service or retirement pay. The laws providing for gratuities or payments in the event of death in the service and existing pension laws shall not be applicable after the enactment of this amendment to persons now in or hereafter entering the military or naval service, or to their widows, children, or their dependents, except in so far as rights under any such law shall have heretofore accrued.

"Compensation because of disability or death of members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) shall be in lieu of any compensation for such disability or death under the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes,' approved September seventh, nineteen hundred and sixteen."

See the notes to section 12 of this Act, *supra*, p. 896.

For the Act of Sept. 7, 1916, ch. 458, mentioned in this section, see Pamph. Supp. No. 8, Fed. Stat. Ann. p. 141.

SEC. 313. [Assignment to United States of right of action for injuries or death — prosecution.] (1) That if an injury or death for which compensation is payable under this article is caused under circumstances creating a legal liability upon some person other than the United States or the enemy to pay damages therefor, the director, as a condition to payment of compensation by the United States, may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person, or if it appears to be for the best interests of the beneficiary the director may require him to prosecute the said action in his own name, subject to regulations. The director may require such assignment or prosecution at any time after the injury or death, and the failure on the part of the beneficiary to so assign or to prosecute said cause of action in his own name within a reasonable time, to be fixed by the director, shall bar any right to compensation on account of the same injury or death. The cause of action so assigned to the United States may be prosecuted or compromised by the director, and any money realized or collected thereon, less the reasonable expenses of such realization or collection, shall be placed to the credit of the military and naval compensation appropriation. If the amount placed to the credit of such appropriation in such case is in excess of the amount of the award of compensation, if any, such excess shall be paid to the beneficiary after any compensation award for the same injury or death is made.

If a beneficiary or conditional beneficiary shall have recovered, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such money or other property so recovered shall be credited upon any compensation payable, or which may become payable to such beneficiary, or conditional beneficiary by the United States on account of the same injury or death.

(2) If an injury or death for which compensation may be payable under this article is caused under circumstances creating a legal liability upon some person, other than the United States or the enemy, to pay damages therefor, then, in order to preserve the right of action, the director may require the conditional beneficiary at any time after the injury or death, to assign such right of action to the United States, or, if it appears to be for the best interests of such conditional beneficiary, to prosecute the said cause of action in his own name, subject to regulations. The failure on the part of the beneficiary to so assign or to prosecute the said cause of action in his own name within a reasonable time, to be fixed by the director, shall bar any right to compensation on account of the same injury or death. The cause of action so assigned may be prosecuted or compromised by the director, and any money realized or collected thereon, less the reasonable expenses of such realization or collection, shall be paid to such beneficiary, and be credited upon any future compensation which may become payable to such beneficiary by the United States on account of the same injury or death.

(3) The bureau shall make all necessary regulations for carrying out the purposes of this section. For the purposes of computation only under this section the total amount of compensation due any beneficiary shall be deemed to be equivalent to a lump sum equal to the present value of all future payments of compensation computed as of the date of the award of compensation at four per centum, true discount, compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality.

A conditional beneficiary is any person who may become entitled to compensation under this article on or after the death of the injured person.

Nothing in this section shall be construed to impose any administrative duties upon the War or Navy Departments. [40 Stat. L. 408, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 18. As originally enacted it was as follows:

"SEC. 313. That if an injury or death for which compensation is payable under this amendatory Act is caused under circumstances creating a legal liability upon some person other than the United States or the enemy to pay damages therefor, the director, as a condition to payment of compensation by the United States, shall require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person. The cause of action so assigned to the United States may be prosecuted or compromised by the director and any money realized thereon shall be placed to the credit of the compensation fund."

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 314. [Pensions for service in Civil War, War with Spain, or Philippine Insurrection.] That from and after the passage of this Act

the rate of pension for a widow of an officer or enlisted man of the Army, Navy, or Marine Corps of the United States who served in the Civil War, the War with Spain, or the Philippine Insurrection, now on the pension roll or hereafter to be placed on the pension roll, and entitled to receive a less rate than hereinafter provided, shall be \$25 per month; and nothing herein shall be construed to affect the additional allowance provided by existing pension laws on account of a helpless child or child under sixteen years of age: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private: *And provided further*, That the provisions of this section shall be administered, executed, and enforced by the Commissioner of Pensions. [40 Stat. L. 408.]

See the note to section 12 of this Act, *supra*, p. 896.

ARTICLE IV.

INSURANCE.

SEC. 400. [Insurance.] That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000, upon the payment of the premiums as hereinafter provided. [40 Stat. L. 409.]

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 401. [Time for application — effect of death before application.] That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled, or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of \$25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then \$25 per month shall be paid to his widow from the time of his death and during her widowhood, or if there is no widow surviving him, then to his child or children, or if there is no child surviving him, then to his mother, or if there is no mother surviving him, then to his father, if and while they survive him: *Provided, however*, That not more than two hundred and forty of such monthly installments, including those received by

such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations. [40 Stat. L. 409, as amended by 40 Stat. L. —.]

This Act was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 19. As originally enacted it was as follows:

"SEC. 401. That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of \$25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then \$25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: *Provided, however,* That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations."

Said amendatory Act of June 25, 1918, ch. —, by section 20 thereof provided as follows:

"SEC. 20. That section nineteen of this Act amending section four hundred and one of the Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, as amended, shall be deemed to be in effect as of October sixth, nineteen hundred and seventeen: *Provided,* That nothing herein shall be construed to interfere with the payment of monthly installments, authorized to be made under the provisions of said section four hundred and one as originally enacted, for the months up to and including June, nineteen hundred and eighteen: *Provided further,* That all awards of automatic insurance under the provisions of said section four hundred and one as originally enacted shall be revised as of the first day of July, nineteen hundred and eighteen, in accordance with the provisions of said section four hundred and one as amended by section nineteen of this Act."

The text section as amended apparently superseded a Res. of Feb. 12, 1918, No. 22, — Stat. L. —, entitled "Joint Resolution Granting to certain persons in the active war service an extension of time within which application for insurance may be made under section four hundred and one of the Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen," which was as follows:

"That the time within which application for insurance may be made as set forth in section four hundred and one of the Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, is hereby extended, with respect to every person in the active war service as to whom the time for making application would expire before the twelfth day of April, nineteen hundred and eighteen, so that every such person may make application for insurance up to and including the said twelfth day of April, nineteen hundred and eighteen: *Provided,* That nothing herein shall be construed to effect an extension of the automatic insurance provided for in the said section four hundred and one beyond the twelfth day of February, nineteen hundred and eighteen."

See the note to section 12 of this Act, *supra*, p. 896.

SEC. 402. [Insurance — terms and conditions — assignment — subject to claims of creditors — beneficiaries — payment.] That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall be payable

only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance. [40 Stat. L. 409, as amended by 40 Stat. L. —.]

This section was amended to read as given in the text by the Act of June 25, 1918, ch. —, § 21. As originally enacted it was as follows:

"SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of

his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance."

See the notes to section 12 of this Act, *supra*, p. 896.

The Resolution of April 2, 1918, ch. —, 40 Stat. L. —, set out *infra*, p. 920, affects this section.

An appropriation for the payment of liabilities incurred under contracts made under the provisions of this article IV was made by section 20 of this Act, *supra*, p. 899.

Provisions relating to evidence of marriage, and defining various beneficiaries, were made by section 22 of this Act, *supra*, p. 899.

SEC. 403. [**Expense of administration — premium rates.**] That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum. [40 Stat. L. 410.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 404. [**Form of insurance.**] That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election. [40 Stat. L. 410.]

See the notes to section 12 of this Act, *supra*, p. 896.

SEC. 405. [**Actions on claims — parties — jurisdiction — judgment — attorney's fees — compensation or fees prohibited — penalty — repealed.**] That in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. The court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed ten per centum of the amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his attorney and it shall be unlawful for the attorney or for any other person acting as claim agent or otherwise to ask for, contract for, or receive any other compensation because of such action. No other compensation or fee shall be charged or received by any person except such as may be authorized by the commissioner in regulations to be promulgated by him. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding \$500,

or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court. [40 Stat. L. 410.]

See the notes to section 12 of this Act, *supra*, p. 896.

This section was repealed by the Act of May 20, 1918, ch. —, § 2, — Stat. L. —.
See section 13 of this Act, *supra*, p. 896.

Joint Resolution Authorizing the granting of insurance under the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, on application by a person other than the person to be insured.

[*Res. of April 2, 1918, ch. —, 40 Stat. L. —.*]

[**War risk insurance — application for policy — by whom made — beneficiaries.**] That insurance under the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, shall be granted by the Bureau of War Risk Insurance on application made by the person to be insured or, subject to such regulations as the bureau may prescribe, by any person within the permitted class as specified in section four hundred and two of said Act: *Provided*, That the person to be insured has been taken a prisoner of war before April twelfth, nineteen hundred and eighteen: *And provided further*, That no one but the insured may designate a beneficiary, and nothing in this resolution shall be deemed to change or affect the permitted class of beneficiaries or impose any obligation on the insured against his will. [40 Stat. L. —.]

Joint Resolution Providing for an increase of the enlisted men of the Army in an emergency.

[*Res. of March 17, 1916, ch. 46, 39 Stat. L. 36.*]

[**Army increase in emergency — enlisted men.**] That when in the judgment of the President an emergency arises which makes it necessary, all organizations of the Army which are now below the maximum enlisted strength authorized by law shall be raised forthwith to that strength, and shall be maintained as nearly as possible thereat so long as the emergency shall continue: *Provided*, That the total enlisted strength of any of said arms of the service shall not include unassigned recruits therefor at depots or elsewhere, but such recruits shall at no time exceed by more than five per centum the total enlisted strength prescribed for such arms; and the enlisted men now or hereafter authorized by law for other branches of the military service shall be provided and maintained without any impairment of the enlisted strength prescribed for any of said arms. [39 Stat. L. 36.]

An Act To permit issue by the supply departments of the Army to certain military schools and colleges.

[*Act of May 18, 1916, ch. 124, 39 Stat. L. 123.*]

[Quartermaster supplies — issuance to military schools and colleges.]

That the Secretary of War is authorized to issue, at his discretion and under such regulations as he may prescribe, such quartermaster supplies and stores belonging to the Government, and which can be spared for that purpose, as may appear to be required for the establishment and maintenance of military instruction camps by the students of any educational institution to which an officer of the Army is detailed as professor of military science and tactics, and the Secretary of War shall require a bond in each case in the value of the property for the care and safe-keeping thereof and for the return of the same when required. [39 Stat. L. 123.]

An Act For making further and more effectual provision for the national defense, and for other purposes.

[*Act of June 3, 1916, ch. 134, 39 Stat. L. 166.*]

[SEC. 1.] **[Army of United States — composition.]** That the Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law. [39 Stat. L. 166.]

SEC. 2. **[Composition of the Regular Army.]** The Regular Army of the United States, including the existing organizations, shall consist of sixty-four regiments of Infantry, twenty-five regiments of Cavalry, twenty-one regiments of Field Artillery, a Coast Artillery Corps, the brigade, division, army corps, and army headquarters, with their detachments and troops, a General Staff Corps, an Adjutant General's Department, an Inspector General's Department, a Judge Advocate General's Department, a Quartermaster Corps, a Medical Department, a Corps of Engineers, an Ordnance Department, a Signal Corps, the officers of the Bureau of Insular Affairs, the Militia Bureau, the detached officers, the detached noncommissioned officers, the chaplains, the Regular Army Reserve, all organized as hereinafter provided, and the following as now authorized by law: The officers and enlisted men on the retired list; the additional officers; the professors, the Corps of Cadets, the general Army service detachment, and detachments of Cavalry, Field Artillery, and Engineers, and the band of the United States Military Academy; the post noncommissioned staff officers; the recruiting parties, the recruit depot detachments, and unassigned recruits; the service school detachments; the disciplinary guards; the disciplinary organizations; the Indian Scouts; and such other officers and enlisted men as are now or may be hereafter provided for: *Provided*, That hereafter the enlisted personnel of all organizations of the Regular Army shall at all times be maintained at a strength

not below the minimum strength fixed by law: *Provided further*, That the total enlisted force of the line of the Regular Army, excluding the Philippine Scouts and the enlisted men of the Quartermaster Corps, of the Medical Department, and of the Signal Corps, and the unassigned recruits, shall not at any one time, except in the event of actual or threatened war or similar emergency in which the public safety demands it, exceed one hundred and seventy-five thousand men: *Provided further*, That the unassigned recruits at depots or elsewhere shall at no time, except in time of war, exceed by more than seven per centum the total authorized enlisted strength. [39 Stat. L. 166.]

SEC. 3. [Composition of brigades, divisions, and so forth.] The mobile troops of the Regular Army of the United States shall be organized, as far as practicable, into brigades and divisions. The President is authorized, in time of actual or threatened hostilities, or when in his opinion the interests of the public service demand it, to organize the brigades and divisions into such army corps or armies as may be necessary. The typical Infantry brigade shall consist of a headquarters and three regiments of Infantry. The typical Cavalry brigade shall consist of a headquarters and three regiments of Cavalry. The typical Field Artillery brigade shall consist of a headquarters and three regiments of Field Artillery. The typical Infantry division shall consist of a headquarters, three Infantry brigades, one regiment of Cavalry, one Field Artillery brigade, one regiment of Engineers, one field signal battalion, one aero squadron, one ammunition train, one supply train, one engineer train, and one sanitary train. The typical Cavalry division shall consist of a headquarters, three Cavalry brigades, one regiment of Field Artillery (horse), one battalion of mounted Engineers, one field signal battalion (mounted), one aero squadron, one ammunition train, one supply train, one engineer train, and one sanitary train. The typical army corps shall consist of a headquarters, two or more Infantry divisions, one or more Cavalry brigades or a Cavalry division, one Field Artillery brigade, one telegraph battalion, and one field signal battalion, and such ammunition, supply, engineer, and sanitary trains as the President may deem necessary. A brigade, a division, an army corps, and an army headquarters shall consist of such officers, enlisted men, and civilians as the President may prescribe. Each supply train, ammunition train, sanitary train, and engineer train shall consist of such officers and enlisted men and shall be organized as the President may prescribe, the line officers necessary therewith to be detailed under the provisions of sections twenty-six and twenty-seven, Act of Congress approved February second, nineteen hundred and one. Nothing herein contained, however, shall prevent the President from increasing or decreasing the number of organizations prescribed for the typical brigades, divisions, and army corps, or from prescribing new and different organizations and personnel as the efficiency of the service may require. [39 Stat. L. 166.]

For sections 26 and 27, mentioned above, see 7 Fed. Stat. Ann. 999, 1000.

SEC. 4. [General officers of the line.] Officers commissioned to and holding in the Army the office of a general officer shall hereafter be known as general officers of the line; officers commissioned to and holding in the

Army an office other than that of a general officer, but to which the rank of a general officer is attached, shall be known as general officers of the staff. The number of general officers of the line now authorized by law is hereby increased by four major generals and nineteen brigadier generals: *Provided*, That hereafter in time of peace major generals of the line shall be appointed from officers of the grade of brigadier general of the line, and brigadier generals of the line shall be appointed from officers of the grade of colonel of the line of the Regular Army. [39 Stat. L., 167.]

SEC. 5. [The General Staff Corps.] The General Staff Corps shall consist of one Chief of Staff, detailed in time of peace from major generals of the line; two Assistants to the Chief of Staff, who shall be general officers of the line, one of whom, not above the grade of brigadier general, shall be the president of the Army War College; ten colonels; ten lieutenant colonels; fifteen majors; and seventeen captains, to be detailed from corresponding grades in the Army, as in this section hereinafter provided. All officers detailed in the General Staff Corps shall be detailed therein for periods of four years, unless sooner relieved. While serving in the General Staff Corps officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps officers shall return to the branch of the Army in which they hold permanent commissions, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in time of actual or threatened hostilities. Section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, shall apply to each position vacated by officers below the grade of general officers detailed in the General Staff Corps.¹

Not more than one-half of all the officers detailed in said corps shall at any time be stationed, or assigned to or employed upon any duty, in or near the District of Columbia. All officers detailed in said corps shall be exclusively employed in the study of military problems, the preparation of plans for the national defense and the utilization of the military forces in time

¹ *Paragraph temporarily amended.*—The Army Appropriation Act of May 12, 1917, ch. 12, 40 Stat. L. 46, contained a provision temporarily amending this first paragraph of section 5. The provision reads as follows:

“That the first paragraph of section five of the National Defense Act approved June third, nineteen hundred and sixteen, be, and the same is hereby, amended for the period of the existing emergency to read as follows: ‘Sec. 5. The General Staff Corps.—The General Staff Corps shall consist of one Chief of Staff, who shall be a general officer of the line and who shall take rank and precedence over all other officers of the Army; two assistants to the Chief of Staff, who shall be general officers of the line, one of whom shall be the president of the Army War College; ten colonels; twelve lieutenant colonels; thirty-two majors; and thirty-four captains, to be detailed from corresponding grades in the Army as in this section hereinafter provided. All officers detailed in the General Staff Corps shall be detailed therein for a period of four years, unless sooner relieved. While serving in the General Staff Corps, officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps officers shall return to the branch of the Army in which they hold permanent commissions, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in time of actual or threatened hostilities. Section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, shall apply to each position vacated by officers below the grade of general officer detailed in the General Staff Corps.’”

of war, in investigating and reporting upon the efficiency and state of preparedness of such forces for service in peace or war, or on appropriate general staff duties in connection with troops, including the National Guard, or as military attaches in foreign countries, or on other duties, not of an administrative nature, on which they can be lawfully and properly employed: *Provided*, That no officer shall be detailed as a member of the General Staff Corps, other than the Chief of Staff and the general officers herein provided for as assistants to the Chief of Staff, except upon the recommendation of a board of five officers not below the rank of colonel, who shall be selected by the President or the Secretary of War, and neither the Chief of Staff nor more than two other members of the General Staff Corps, nor any officer not a member of said corps, who shall have been stationed or employed on any duty in or near the District of Columbia within one year prior to the date of convening of any such board, shall be detailed as a member thereof. No recommendation made by any such board shall, for more than one year after the making of such recommendation or at any time after the convening of another such board, unless again recommended by the new board, be valid as a basis for the detail of any officer as a member of the General Staff Corps; and no alteration whatever shall be made in any report or recommendation of any such board, either with or without the consent of members thereof, after the board shall have submitted such report or recommendation and shall have adjourned sine die: *Provided further*, That the War College shall remain fully subject to the supervising, coordinating, and informing powers conferred by law upon members of the General Staff Corps, and officers for duty as instructors or students in or as attaches of said college may be selected and detailed freely from among members of said corps, but any officer so selected and detailed other than one director shall thereupon cease to be a member of said corps and shall not be eligible for redetail therein so long as he shall remain on said duty; and no officer on the active list of the Army shall, for more than thirty days in any calendar year, be attached to or assigned to duty in the War College in any capacity other than that of president, director, instructor, or student, or, unless a member of the General Staff Corps, be attached to or employed in the office of the Chief of Staff: *Provided further*, That the organizations heretofore existing in or in connection with the office of the Chief of Staff under the designations of the mobile army division and the Coast Artillery division be, and they are hereby, abolished and shall not be reestablished. The business heretofore transacted in said divisions, except such as comes clearly within the general powers specified in and conferred upon members of the General Staff Corps by the organic Act of Congress approved February fourteenth, nineteen hundred and three, is hereby transferred as follows, to wit, to the office of the Chief of Coast Artillery, all business apportioned to that office by law or Army regulations at the time of the creation of the Coast Artillery division of the office of the Chief of Staff; to the office of The Adjutant General or other bureau or bureaus concerned, all other business; and, subject to the exercise of the supervising, coordinating, and informing powers conferred upon members of the General Staff Corps by the Act of Congress last hereinbefore cited, the business transferred by this proviso to certain bureaus or offices shall hereafter be transacted exclusively by or under the direction of the respective

heads thereof; and the Chief of Coast Artillery shall be an additional member of the General Staff Corps and shall also be advisor to and informant of the Chief of Staff in respect to the business under his charge: *Provided further*, That hereafter members of the General Staff Corps shall be confined strictly to the discharge of the duties of the general nature of those specified for them in this section and in the organic Act of Congress last hereinbefore cited, and they shall not be permitted to assume or engage in work of an administrative nature that pertains to established bureaus or offices of the War Department, or that being assumed or engaged in by members of the General Staff Corps, would involve impairment of the responsibility or initiative of such bureaus or offices, or would cause injurious or unnecessary duplication of or delay in the work thereof: *Provided further*, That all pay and allowances shall be forfeited by any superior for any period during which, by his order or his permission, or by reason of his neglect, any subordinate shall violate any of the foregoing provisions of this section: *Provided further*, That if any officer detailed in the General Staff Corps, or as an officer of any staff corps or department of the Army, shall be promoted to the next higher grade while so serving he may be permitted to serve out the period of his detail, and the number of officers in the organization in which he shall be serving and in the grade to which he shall have been promoted shall be increased by one for such time as he shall be an additional number in said organization and grade; but the whole number of officers detailed to said organization shall at no time exceed the aggregate of the numbers allowed to the several grades thereof by law other than this proviso. [39 Stat. L. 167, as amended by 40 Stat. L. 40.]

This section was amended to read as here given by the Act of May 12, 1917, entitled "An Act making appropriation for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes." The pertinent part of such Act was as follows:

"That the following language of section five of the Act of June third, nineteen hundred and sixteen, entitled 'An Act for making further and more effectual provision for the national defense, and for other purposes,' to wit: 'Not more than one-half of all of the officers detailed in said corps shall at any time be stationed, or assigned to or employed upon any duty, in or near the District of Columbia,' be amended so as to authorize the President to suspend the operation of the same during the existing emergency."

For Act of June 3, 1917, § 5, see Fed. Stat. Ann. Pamph. Supp. No. 7, p. 44.

A temporary amendment to this section is shown in the footnote, *supra*, p. 923.

For the Act of Feb. 2, 1901, § 21, mentioned in the text, see 7 Fed. Stat. Ann. 988.

SEC. 6. [The Adjutant General's Department.] The Adjutant General's Department shall consist of The Adjutant General with the rank of brigadier general; seven adjutants-general with the rank of colonel; thirteen adjutants-general with the rank of lieutenant colonel; and thirty adjutants-general with the rank of major. [39 Stat. L. 169.]

SEC. 7. [The Inspector General's Department.] The Inspector General's Department shall consist of one Inspector General with the rank of brigadier general; four inspectors-general with the rank of colonel; eight inspectors-general with the rank of lieutenant colonel; and sixteen inspectors-general with the rank of major. [39 Stat. L. 169.]

SEC. 8. [The Judge Advocate General's Department.] The Judge Advocate General's Department shall consist of one Judge Advocate General with the rank of brigadier general; four judge advocates with the rank of colonel; seven judge advocates with the rank of lieutenant colonel; and twenty judge advocates with the rank of major: *Provided*, That acting judge advocates may be detailed under the provisions of existing law for separate brigades and for separate general court-martial jurisdictions, and when not immediately required for service with a geographical department, tactical division, separate brigade, or other separate general court-martial jurisdiction, acting judge advocates may be assigned to such other legal duty as the exigencies of the service may require: *Provided further*, That, of the vacancies created in the Judge Advocate General's Department by this Act, one such vacancy, not below the grade of major, shall be filled by the appointment of a person from civil life, not less than forty-five nor more than fifty years of age, who shall have been for ten years a judge of the Supreme Court of the Philippine Islands, shall have served for two years as a captain in the Regular or Volunteer Army, and shall be proficient in the Spanish language and laws: *Provided further*, That so much of the Act of Congress approved August twenty-fourth, nineteen hundred and twelve, as relates to the detachment or detail of officers for duty in the Judge Advocate General's Department shall hereafter be held to apply only to the acting judge advocates authorized by law; and hereafter no officer shall be or remain detached from any command or assigned to any duty or station with intent to enable or aid him to pursue the study of law: *And provided further*, That no officer of the Judge Advocate General's Department below the rank of colonel shall be promoted therein until he shall have successfully passed a written examination before a board consisting of not less than two officers of the Judge Advocate General's Department, to be designated by the Secretary of War, such examination to be prescribed by the Secretary of War and be held at such time anterior to the accruing of the right to promotion as may be for the best interests of the service: *Provided*, That should any officer in the grade of major of the Judge Advocate General's Department fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should be found disqualified for promotion for any other reason, a second examination shall not be allowed, but the Secretary of War shall appoint a board of review to consist of two officers of the Judge Advocate General's Department superior in rank to the officer examined, none of whom shall have served as a member of the board which examined him. If the unfavorable finding of the examining board is concurred in by the board of review, the officer reported disqualified for promotion shall be honorably discharged from the service with one year's pay. If the action of the examining board is disapproved by the board of review, the officer shall be considered qualified and shall be promoted: *Provided further*, That any lieutenant colonel of the Judge Advocate General's Department who, at his first examination for promotion to the grade of colonel, has been found disqualified for such promotion for any reason other than physical disability incurred in the line of duty shall be suspended from promotion and his right thereto shall pass successively

to such officers next below him in rank as are or may become eligible to promotion under existing law during the period of his suspension; and any such officer suspended from promotion shall be reexamined as soon as practicable after the expiration of one year from the date of the completion of the examination that resulted in his suspension; and if on such reexamination he is found qualified for promotion, he shall again become eligible thereto; but if he is found disqualified by reason of physical disability incurred in line of duty in either examination, he shall be retired, with the rank to which his seniority entitled him to be promoted; and if he is not found disqualified by reason of such physical disability; but is found disqualified for promotion for any other reason in the second examination, he shall be retired without promotion. [39 Stat. L. 169.]

For the Act of Aug. 24, 1912, mentioned above, see 1914 Supp. Fed. Stat. Ann. 411.

SEC. 9. [The Quartermaster Corps.] The Quartermaster Corps shall consist of one Quartermaster General with the rank of major general; two assistants to the Quartermaster General with the rank of brigadier general; twenty-one colonels; twenty-four lieutenant colonels; sixty-eight majors; one hundred and eighty captains; and the pay clerks now in active service, who shall hereafter have the rank, pay, and allowances of a second lieutenant, and the President is hereby authorized to appoint and commission them, by and with the advice and consent of the Senate, second lieutenants in the Quartermaster Corps, United States Army. The total enlisted strength of the Quartermaster Corps and the number in each grade shall be limited and fixed from time to time by the President in accordance with the needs of the Army, and shall consist of quartermaster sergeants, senior grade; quartermaster sergeants; sergeants, first class; sergeants; corporals; cooks; privates, first class; and privates. The number in the various grades shall not exceed the following percentages of the total authorized enlisted strength of the Quartermaster Corps, namely: Quartermaster sergeants, senior grade, five-tenths of one per centum; quartermaster sergeants, six per centum; sergeants, first class, two and five-tenths per centum; sergeants, twenty-five per centum; corporals, ten per centum; privates, first class, forty-five per centum; privates, nine per centum; cooks, two per centum: *Provided*, That the master electricians now authorized by law for the Quartermaster Corps shall hereafter be known as quartermaster sergeants, senior grade, and shall be included in the number of quartermaster sergeants, senior grade, herein authorized: *And provided further*, That all work pertaining to construction and repair that has heretofore been done by or under the direction of officers of the Quartermaster Corps shall, except as otherwise now provided by laws or regulations, hereafter be done by or under the direction of officers of said corps. [39 Stat. L. 170.]

SEC. 10. [The Medical Department.] The Medical Department shall consist of one Surgeon General, with the rank of major general during the active service of the present incumbent of that office, and thereafter with the rank of brigadier general, who shall be chief of said department, a Medical Corps, a Medical Reserve Corps within the limit of time fixed by this Act, a Dental Corps, a Veterinary Corps, an enlisted force, the Nurse

Corps and contract surgeons as now authorized by law, the commissioned officers of which shall be citizens of the United States.

The Medical Corps shall consist of commissioned officers below the grade of brigadier general, proportionally distributed among the several grades as in the Medical Corps now established by law. The total number of such officers shall approximately be equal to, but not exceed, except as hereinafter provided, seven for every one thousand of the total enlisted strength of the Regular Army authorized from time to time by law: *Provided*, That if by reason of a reduction by law in the authorized enlisted strength of the Army aforesaid the total number of officers in the Medical Corps commissioned previously to such reduction shall for the time being exceed the equivalent of seven to one thousand of such reduced enlisted strength no original appointment to commissioned rank in said corps shall be made until the total number of commissioned officers thereof shall have been reduced below the equivalent of seven to the thousand of the said reduced enlisted strength, nor thereafter so as to make the total number of commissioned officers thereof in excess of the equivalent of seven to the thousand of said reduced enlisted strength; and no promotion shall be made above the grade of captain in said corps until the number of officers in the grade above that of captain to which the promotion is due shall have been reduced below the proportional number authorized for such grade on the basis of the reduced enlisted strength, nor thereafter so as to make the number of officers in such grade in excess of the proportional number authorized on the basis of said reduced enlisted strength: *Provided further*, That when in time of war the Regular Army shall have been increased by virtue of the provisions of this or any other Act, the medical officers appointed to meet such increase shall be honorably discharged from the service of the United States when the reduction of the enlisted strength of the Army shall take place: *Provided further*, That persons hereafter commissioned in the Medical Corps shall be citizens of the United States between the ages of twenty-two and thirty years and shall be promoted to the grade of captain upon the completion of five years' service in the Medical Corps and upon passing the examinations prescribed by the President for promotion to the grade of captain in the Medical Corps: *Provided further*, That relative rank among captains in the Medical Corps, who have or shall have attained that rank by operation of law after a period of service fixed thereby, shall be determined by counting all the service rendered by them as officers in said corps and as assistant surgeons in the Regular Army, subject, however, to loss of files by reason of sentence of court-martial or by reason of failure to pass examination for promotion: *Provided further*. That hereafter the President shall be authorized to detail not to exceed five officers of the Medical Department of the Army for duty with the military relief division of the American National Red Cross: *And provided further*, That any person who at the time of the approval of this Act shall be and has been an officer of the Medical Reserve Corps, or contract surgeon, on active duty for twelve years subsequent to eighteen hundred and ninety-eight shall be eligible for appointment as first lieutenant in the Medical Corps, subject to examination: *And provided further*, That any officer so eligible who fails to pass the physical examination by reason of disability incurred in line of duty shall be retired with the pay and allowances of a first lieutenant of the Medical Corps.

The enlisted force of the Medical Department shall consist of the following personnel, who shall not be included in the effective strength of the Army nor counted as a part of the enlisted force provided by law: Master hospital sergeants, hospital sergeants, sergeants (first-class), sergeants, corporals, cooks, horseshoers, saddlers, stable sergeants, mechanics, privates (first-class), and privates: *Provided*, That master hospital sergeants shall be appointed by the Secretary of War, but no person shall be appointed master hospital sergeant until he shall have passed a satisfactory examination under such regulations as the Secretary of War may prescribe before a board of one or more medical officers as to his qualifications for the position, including knowledge of pharmacy, and demonstrated his fitness therefor by service of not less than twelve months as hospital sergeant or sergeant, first class, Medical Department, or as sergeant, first class, in the Hospital Corps now established by law; and no person shall be designated for such examination except by written authority of the Surgeon General: *Provided further*, That original enlistments for the Medical Department shall be made in the grade of private, and reenlistments and promotions of enlisted men therein, except as hereinbefore prescribed, and transfers thereto from the enlisted force of the line or other staff departments and corps of the Army shall be governed by such regulations as the Secretary of War may prescribe: *Provided further*, That the enlisted men of the Hospital Corps who are in active service at the time of the approval of this Act are hereby transferred to the corresponding grades of the Medical Department established by this Act: *Provided further*, That the total number of enlisted men in the Medical Department shall be approximately equal to, but not exceed, except as hereinafter provided, the equivalent of five per centum of the total enlisted strength of the Army authorized from time to time by law: *Provided further*, That in time of actual or threatened hostilities, the Secretary of War is hereby authorized to enlist or cause to be enlisted in the Medical Department such additional number of men as the service may require: *Provided further*, That the number of enlisted men in each of the several grades designated below shall not exceed, except as hereinafter provided, the following percentages of the total authorized enlisted strength of the Medical Department, to wit: Master hospital sergeants, one-half of one per centum; hospital sergeants, one-half of one per centum; sergeants, first class, seven per centum; sergeants, eleven per centum; corporals, five per centum; and cooks, six per centum: *Provided further*, That the number of horseshoers, saddlers, stable sergeants, and mechanics in the Medical Department shall not exceed one each to each authorized ambulance company or like organization: *Provided further*, That in said department the number of privates, first class, shall not exceed twenty-five per centum of the number of privates: *Provided further*, That if by reason of a reduction by operation of law in the authorized enlisted strength of the Army aforesaid the number of noncommissioned officers of any grade in the Medical Department whose warrants were issued previously to such reduction shall for the time being exceed the percentage hereinabove specified for such grade, no promotion to such grade shall be made until the percentage of noncommissioned officers therein shall have been reduced below that authorized for such grade on the basis of the said reduced enlisted strength, nor thereafter so as to make the percentage of noncommissioned officers therein in excess of the percentage authorized on

the basis of the said reduced enlisted strength; but noncommissioned officers may be reenlisted in the grades held by them previously to such reduction regardless of the percentages aforesaid; and when under this provision the number of noncommissioned officers of any grade exceeds the percentage specified, any noncommissioned officer thereof, not under charges, may be discharged on his own application: *Provided further*, That privates, first class, of the Medical Department shall be eligible for ratings for additional pay as follows: As dispensary assistant, \$2 a month; as nurse, \$3 a month; as surgical assistant, \$5 a month: *Provided further*, That no enlisted man shall receive more than one rating for additional pay under the provisions of this section, nor shall any enlisted man receive any additional pay under such rating unless he shall have actually performed the duties for which he shall be rated.

The President is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental surgeons, who are citizens of the United States between the ages of twenty-one and twenty-seven years, at the rate of one for each one thousand enlisted men of the line of the Army. Dental surgeons shall have the rank, pay, and allowances of first lieutenants until they have completed eight years' service. Dental surgeons of more than eight but less than twenty-four years' service shall, subject to such examination as the President may prescribe, have the rank, pay, and allowances of captains. Dental surgeons of more than twenty-four years' service shall, subject to such examination as the President may prescribe, have the rank, pay, and allowances of major: *Provided*, That the total number of dental surgeons with rank, pay, and allowances of major shall not at any time exceed fifteen: *And provided further*, That all laws relating to the examination of officers of the Medical Corps for promotion shall be applicable to dental surgeons.

Authority is hereby given to the Secretary of War to grant permission, by revocable license, to the American National Red Cross to erect and maintain on any military reservations within the jurisdiction of the United States buildings suitable for the storage of supplies, or to occupy for that purpose buildings erected by the United States, under such regulations as the Secretary of War may prescribe, such supplies to be available for the aid of the civilian population in case of serious national disaster. [39 Stat. L. 171, as amended by 40 Stat. L. —.]

This section was amended to read as here given by the Act of July 9, 1918, ch. 17, § 1. The amendment substituted "stable sergeant" for "farrier" wherever occurring, and added the last two provisos of the second paragraph.

This section is also affected by the Act of Aug. 29, 1916, ch. 418, § 1, 39 Stat. L. 640, which provides as follows:

"That so much of the Act of June third, nineteen hundred and sixteen, as relates to the age limit for eligibility to appointment of first lieutenants in the Medical Department of the Army, be, and the same is hereby, repealed: *Provided further*, That after January first, nineteen hundred and eighteen, the maximum age limit for eligibility to appointment of first lieutenants in the Medical Department of the Army shall be thirty-two years."

SEC. 11. [Corps of Engineers.] The Corps of Engineers shall consist of one Chief of Engineers, with the rank of brigadier general; twenty-three colonels; thirty lieutenant colonels; seventy-two majors; one hundred and fifty-two captains; one hundred and forty-eight first lieutenants; seventy-

nine second lieutenants; and the enlisted men hereinafter enumerated. The Engineer troops of the Corps of Engineers shall consist of one band, seven regiments, and two mounted battalions.

Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenants; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train; one band; and two battalions: *Provided*, That the present Engineer band shall be considered as one of the bands provided for above. [40 Stat. L. —.]

For the National Defense Act of June 3, 1916, ch. 134, § 11, amended by the text, see Pamph. Supp. No. 7, Fed. Stat. Ann. 50.

Each battalion of a regiment of Engineers shall consist of one major, one captain, one battalion sergeant major; three master engineers, junior grade; and three companies. Each Engineer company (regimental) shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; three sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; six sergeants; twelve corporals; one horseshoer; two buglers; one saddler; two cooks; nineteen privates, first class; and fifty-nine privates: *Provided*, That the President may, in his discretion, increase a regiment of Engineers by two master engineers, senior grade, and two sergeants; each battalion of a regiment of Engineers by three master engineers, junior grade; and each Engineer company (regimental) by two sergeants, six corporals, one cook, twelve privates, first class, and thirty-four privates.

The Engineer band shall consist of one band leader; one assistant band leader; one first sergeant; two band sergeants; four band corporals; two musicians, first class; four musicians, second class; thirteen musicians, third class; and two cooks.

Each battalion of mounted Engineers shall consist of one major; five captains; seven first lieutenants; three second lieutenants; one master engineer, senior grade; one battalion sergeant major; one battalion supply sergeant; three master engineers, junior grade; one corporal; one wagoner for each authorized wagon of the field and combat train; and three mounted companies. Each mounted Engineer company shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; two sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; four sergeants; eight corporals; two horseshoers; one saddler; two cooks; two buglers; twelve privates, first class; and thirty-seven privates; *Provided*, That the President may, in his discretion, increase the battalions of mounted Engineers by one master engineer, senior grade; two sergeants; and three master engineers, junior grade; and a mounted Engineer company by two sergeants; three corporals; eight privates, first class; and twenty-four privates: *Provided further*, That appropriate officers to command the regiments, battalions, and companies herein authorized and for duty with and as staff officers of such organizations shall be detailed from the Corps of Engineers, and shall not be in excess of the numbers in each

grade enumerated in this section. The enlisted force of the Corps of Engineers and the officers serving therewith shall constitute a part of the line of the Army. [39 Stat. L. 173, as amended by 40 Stat. L. —.]

The second paragraph of this section was amended by the Act of July 9, 1918, ch. —. It formerly read as follows:

"Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenants; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train, and two battalions."

SEC. 12. [The Ordnance Department.] The Ordnance Department shall consist of one Chief of Ordnance, with the rank of brigadier general; ten colonels; fifteen lieutenant colonels; thirty-two majors; forty-two captains; forty-two first lieutenants; the ordnance sergeants, as now authorized by law, and such other enlisted men of grades now authorized by law as the President may direct: *Provided*, That ordnance sergeants shall be selected by the Secretary of War from the sergeants of the line or Ordnance Department who shall have served faithfully for eight years, including four years in the grade of noncommissioned officer: *Provided further*, That vacancies which may occur in the commissioned personnel of the Ordnance Department shall be subject to the provisions of sections twenty-six and twenty-seven of the Act approved February second, nineteen hundred and one, the Acts approved June twenty-fifth, nineteen hundred and six, and February twenty-fourth, nineteen hundred and fifteen, and Acts amendatory thereof relating to the Ordnance Department: *Provided further*, That hereafter the Secretary of War is authorized to detail not to exceed thirty lieutenants from the Army at large for duty as student officers in the establishments of the Ordnance Department for a period of two years; and the completion of the prescribed course of instruction shall constitute the examination for detail in the Ordnance Department. [39 Stat. L. 174.]

For sections 26 and 27, see 7 Fed. Stat. Ann. 999, 1000.

For Act of June 25, 1906, see 1909 Supp. Fed. Stat. Ann. 685.

For Act of Feb. 24, 1915, see 1916 Supp. Fed. Stat. Ann. 302.

A note affecting this section will be found under section 24, *infra*, p. 941.

SEC. 13. [The Signal Corps.] The Signal Corps shall consist of one Chief Signal Officer, with the rank of brigadier general; three colonels; eight lieutenant colonels; ten majors; thirty captains; seventy-five first lieutenants; and the aviation section, which shall consist of one colonel; one lieutenant colonel; eight majors; twenty-four captains; and one hundred and fourteen first lieutenants, who shall be selected from among officers of the Army at large of corresponding grades or from among officers of the grade below, exclusive of those serving by detail in staff corps or departments, who are qualified as military aviators, and shall be detailed to serve as aviation officers for periods of four years unless sooner relieved; and the provisions of section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, are hereby extended to apply to said aviation officers and to vacancies created in any arm, corps, or department of the Army by the detail of said officers therefrom; but nothing in said Act or in any other law now in force shall be held to prevent

the detail or redetail at any time, to fill a vacancy among the aviation officers authorized by this Act, of any officer who, during prior service as an aviation officer of the aviation section, shall have become proficient in military aviation.

Aviation officers may, when qualified therefor, be rated as junior military aviators or as military aviators, but no person shall be so rated until there shall have been issued to him a certificate to the effect that he is qualified for the rating, and no certificate shall be issued to any person until an aviation examining board, which shall be composed of three officers of experience in the aviation service and two medical officers, shall have examined him, under general regulations to be prescribed by the Secretary of War and published to the Army by the War Department, and shall have reported him to be qualified for the rating. No person shall receive the rating of military aviator until he shall have served creditably for three years as an aviation officer with the rating of a junior military aviator.

Each aviation officer authorized by this Act shall, while on duty that requires him to participate regularly and frequently in aerial flights, receive an increase of twenty-five per centum in the pay of his grade and length of service under his commission. Each duly qualified junior military aviator shall, while so serving, have the rank, pay, and allowances of one grade higher than that held by him under his commission if his rank under said commission be not higher than that of captain, and while on duty requiring him to participate regularly and frequently in aerial flights he shall receive in addition an increase of fifty per centum in the pay of his grade and length of service under his commission. Each military aviator shall, while so serving, have the rank, pay, and allowances of one grade higher than that held by him under his commission if his rank under said commission be not higher than that of captain, and while on duty requiring him to participate regularly and frequently in aerial flights he shall receive in addition an increase of seventy-five per centum of the pay of his grade and length of service under his commission: *Provided further*, That the provisions of the Act of March second, nineteen hundred and thirteen, allowing increase of pay and allowances to officers detailed by the Secretary of War on aviation duty, are hereby repealed: *Provided further*, That hereafter married officers of the line of the Army shall be eligible equally with unmarried officers, and subject to the same conditions, for detail to aviation duty; and the Secretary of War shall have authority to cause as many enlisted men of the aviation section to be instructed in the art of flying as he may deem necessary: *Provided further*, That hereafter the age of officers shall not be a bar to their first detail in the aviation section of the Signal Corps, and neither their age nor their rank shall be a bar to their subsequent details in said section: *Provided further*, That, when it shall be impracticable to obtain from the Army officers suitable for the aviation section of the Signal Corps in the number allowed by law the difference between that number and the number of suitable officers actually available for duty in said section may be made up by appointments in the grade of aviator, Signal Corps, and that grade is hereby created. The personnel for said grade shall be obtained from especially qualified civilians who shall be appointed and commissioned in

said grade: *Provided further*, That whenever any aviator shall have become unsatisfactory he shall be discharged from the Army as such aviator. The base pay of an aviator, Signal Corps, shall be \$150 per month, and he shall have the allowances of a master signal electrician and the same percentage of increase in pay for length of service as is allowed to a master signal electrician.

The total enlisted strength of the Signal Corps shall be limited and fixed from time to time by the President in accordance with the needs of the Army, and shall consist of master signal electricians, sergeants, first class; sergeants; corporals; cooks; horseshoers; private, first class; and privates; the number in each grade being fixed from time to time by the President. The numbers in the various grades shall not exceed the following percentages of the total authorized enlisted strength of the Signal Corps, namely: Master signal electricians, two per centum; sergeants, first class, seven per centum; sergeants, ten per centum; corporals, twenty per centum. The number of privates, first class, shall not exceed twenty-five per centum of the number of privates. Authority is hereby given the President to organize, in his discretion, such part of the commissioned and enlisted personnel of the Signal Corps into such number of companies, battalions, and aero squadrons as the necessities of the service may demand. [39 Stat. L. 174.]

For section 27, mentioned above, see 7 Fed. Stat. Ann. 1000.

For Act of March 2, 1913, see 1914 Supp. Fed. Stat. Ann. 418.

SEC. 14. [Bureau of Insular Affairs of the War Department.] Nothing in this Act shall be construed to repeal existing laws relating to the organization of the Bureau of Insular Affairs of the War Department. [39 Stat. L. 176.]

SEC. 15. [Chaplains.] The President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army at the rate of not to exceed, including chaplains now in the service, one for each one thousand two hundred officers and men in all branches of the Military Establishment, with rank, pay, and allowances as now authorized by law: *Provided*, That there shall be assigned at least one chaplain for each regiment of Cavalry, Infantry, Field Artillery, and Engineers: *Provided further*, That the persons appointed under this Act shall be duly accredited by some religious denomination or organization and of good standing therein, under such regulations as may be prescribed by the Secretary of War: *And provided further*, That no person shall be appointed chaplain in the Army who on the date of appointment is more than forty-five years of age. [39 Stat. L. 176, as amended by 40 Stat. L. 72; 40 Stat. L. —.]

This section was amended by the Act of May 12, 1917, ch. 12, and again amended by the Act of May 25, 1918.

SEC. 16. [Veterinarians.] The President is hereby authorized, by and with the advice and consent of the Senate, to appoint veterinarians and assistant veterinarians in the Army, not to exceed, including veterinarians now in service, two such officers for each regiment of Cavalry, one for every

three batteries of Field Artillery, one for each mounted battalion of Engineers, seventeen as inspectors of horses and mules and as veterinarians in the Quartermaster Corps, and seven as inspectors of meats for the Quartermaster Corps; and said veterinarians and assistant veterinarians shall be citizens of the United States and shall constitute the Veterinary Corps and shall be a part of the Medical Department of the Army.

Hereafter a candidate for appointment as assistant veterinarian must be a citizen of the United States, between the ages of twenty-one and twenty-seven years, a graduate of a recognized veterinary college or university, and shall not be appointed until he shall have passed a satisfactory examination as to character, physical condition, general education, and professional qualifications.

An assistant veterinarian appointed under this Act shall, for the first five years of service as such, have the rank, pay, and allowances of second lieutenant; that after five years of service he shall have the rank, pay, and allowances of first lieutenant; that after fifteen years of service he shall be promoted to be a veterinarian with the rank, pay, and allowances of captain, and that after twenty years' service he shall have the rank, pay, and allowances of a major: *Provided*, That any assistant veterinarian, in order to be promoted as hereinbefore provided, must first pass a satisfactory examination, under such rules as the President may prescribe, as to professional qualifications and adaptability for the military service; and if such assistant veterinarian shall be found deficient at such examination he shall be discharged from the Army with one year's pay.

The veterinarians of Cavalry and Field Artillery now in the Army, together with such veterinarians of the Quartermaster Corps as are now employed in said corps, who at the date of the approval of this Act shall have had less than five years' governmental service, may be appointed in the Veterinary Corps as assistant veterinarians with the rank, pay, and allowances of second lieutenant; those who shall have had over five years of such service may be appointed in said corps as assistant veterinarians with the rank, pay, and allowances of first lieutenant; and those who shall have had over fifteen years of such service may be appointed in said corps as veterinarians with the rank, pay, and allowances of captain: *Provided*, That no such appointment of any veterinarian shall be made unless he shall first pass satisfactorily a practical professional and physical examination as to his fitness for the military service: *Provided further*, That veterinarians now in the Army or in the employ of the Quartermaster Corps who shall fail to pass the prescribed physical examination because of disability incident to the service and sufficient to prevent them from the performance of duty valuable to the Government shall be placed upon the retired list of the Army with seventy-five per centum of the pay to which they would have been entitled if appointed in the Veterinary Corps as hereinbefore prescribed.

The Secretary of War, upon recommendation of the Surgeon General of the Army, may appoint in the Veterinary Corps, for such time as their services may be required, such number of reserve veterinarians as may be necessary to attend public animals pertaining to the Quartermaster Corps. Reserve veterinarians so employed shall have the pay and allowances of second lieutenant during such employment and no longer: *Provided*, That

such reserve veterinarians shall be graduates of a recognized veterinary college or university and shall pass a satisfactory examination as to character, physical condition, general education, and professional qualifications in like manner as hereinbefore required of assistant veterinarians; such reserve veterinarians shall constitute a list of eligibles for appointment as assistant veterinarians, subject to all the conditions hereinbefore prescribed for the appointment of assistant veterinarians.

Within a limit of time to be fixed by the Secretary of War, candidates for appointment as assistant veterinarians who shall have passed satisfactorily the examinations prescribed for that grade by this Act shall be appointed, in the order of merit in which they shall have passed such examination, to vacancies as they occur, such appointments to be for a probationary period of two years, after which time, if the services of the probationers shall have been satisfactory, they shall be permanently appointed with rank to date from the dates of rank of their probationary appointments. Probationary veterinarians whose services are found unsatisfactory shall be discharged at any time during the probationary period, or at the end thereof, and shall have no further claims against the Government on account of their probationary service.

The Secretary of War shall from time to time appoint boards of examiners to conduct the veterinary examinations hereinbefore prescribed, each of said boards to consist of three medical officers and two veterinarians. [39 Stat. L. 176.]

SEC. 17. [Composition of Infantry units.] Each regiment of Infantry shall consist of one colonel, one lieutenant colonel, three majors, fifteen captains, sixteen first lieutenants, fifteen second lieutenants, one headquarters company, one machine-gun company, one supply company, and twelve Infantry companies organized into three battalions of four companies each.

Each battalion shall consist of one major, one first lieutenant, mounted (battalion adjutant), and four companies. Each Infantry company in battalion shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one mess sergeant, one supply sergeant, six sergeants, eleven corporals, two cooks, two buglers, one mechanic, nineteen privates (first class), and fifty-six privates.

Each Infantry headquarters company shall consist of one captain, mounted (regimental adjutant); one regimental sergeant major, mounted; three battalion sergeants major, mounted; one first sergeant (drum major); two color sergeants; one mess sergeant; one supply sergeant; one stable sergeant; one sergeant; two cooks; one horseshoer; one band leader; one assistant band leader; one sergeant bugler; two band sergeants; four band corporals; two musicians, first class; four musicians, second class; thirteen musicians, third class; four privates, first class, mounted; and twelve privates, mounted.

Each Infantry machine-gun company shall consist of one captain, mounted; one first lieutenant, mounted; two second lieutenants, mounted; one first sergeant, mounted; one mess sergeant; one supply sergeant, mounted; one stable sergeant, mounted; one horseshoer; five sergeants; six

corporals; two cooks; two buglers; one mechanic; eight privates, first class; and twenty-four privates.

Each Infantry supply company shall consist of one captain, mounted; one second lieutenant, mounted; three regimental supply sergeants, mounted; one first sergeant, mounted; one mess sergeant; one stable sergeant; one corporal, mounted; one cook; one saddler; one horseshoer; and one wagoner for each authorized wagon of the field and combat train: *Provided*, That the President may in his discretion increase a company of Infantry by two sergeants, six corporals, one cook, one mechanic, nine privates (first class), and thirty-one privates; an Infantry machine-gun company by two sergeants, two corporals, one mechanic, four privates, first class, and twelve privates.

The commissioned officers required for the Infantry headquarters, supply, and machine-gun companies and for the companies organized into battalions shall be assigned from those hereinbefore authorized. [39 Stat. L. 177.]

SEC. 18. [Composition of Cavalry units.] Each regiment of Cavalry shall consist of one colonel, one lieutenant colonel, three majors, fifteen captains, sixteen first lieutenants, sixteen second lieutenants, one headquarters troop, one machine-gun troop, one supply troop, and twelve troops organized into three squadrons of four troops each.

Each squadron shall consist of one major, one first lieutenant (squadron adjutant), and four troops. Each troop in squadron shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one mess sergeant, one supply sergeant, one stable sergeant, five sergeants, eight corporals, two cooks, two horseshoers, one saddler, two buglers, ten privates (first class), and thirty-six privates.

Each headquarters troop shall consist of one captain (regimental adjutant), one regimental sergeant major, three squadron sergeants major, one first sergeant (drum major), two color sergeants, one mess sergeant, one supply sergeant, one stable sergeant, one sergeant, two cooks, one horseshoer, one saddler, two privates (first class), and nine privates, one band leader, one assistant band leader, one sergeant bugler, two band sergeants, four band corporals, two musicians (first class), four musicians (second class), and thirteen musicians (third class).

Each machine-gun troop shall consist of one captain, one first lieutenant, two second lieutenants, one first sergeant, one mess sergeant, one supply sergeant, one stable sergeant, two horseshoers, five sergeants, six corporals, two cooks, one mechanic, one saddler, two buglers, twelve privates (first class), and thirty-five privates.

Each supply troop shall consist of one captain (regimental supply officer), two second lieutenants, three regimental supply sergeants, one first sergeant, one mess sergeant, one stable sergeant, one corporal, one cook, one horseshoer, one saddler, and one wagoner for each authorized wagon of the field and combat train: *Provided*, That the President may, in his discretion, increase each troop of Cavalry by ten privates (first class) and twenty-five privates; the headquarters troop by two sergeants, five corporals, one horseshoer, five privates (first class), and eighteen privates; each machine-gun

troop by three sergeants, two corporals, one mechanic, one private (first class), and fourteen privates; each supply troop by one corporal, one cook, one saddler, and one horseshoer.

The commissioned officers required for the Cavalry headquarters, supply, and machine-gun troops, and for the troops organized into squadrons, shall be assigned from those hereinbefore authorized. [39 Stat. L. 178.]

SEC. 19. [Composition of Field Artillery units.] The Field Artillery, including mountain artillery, light artillery, horse artillery, heavy artillery (field and siege types), shall consist of one hundred and twenty-six gun or howitzer batteries organized into twenty-one regiments.

In time of actual or threatened hostilities the President is authorized to organize such number of ammunition batteries and battalions, depot batteries and battalions, and such artillery parks with such numbers and grades of personnel and such organizations as he may deem necessary. The officers necessary for such organization shall be supplied from the Officers' Reserve Corps provided by this Act and by temporary appointment as authorized by section eight of the Act of Congress approved April twenty-fifth, nineteen hundred and fourteen. The enlisted men necessary for such organizations shall be supplied from the Regular Army Reserve provided by this Act or from the Regular Army.

Each regiment of Field Artillery shall consist of one colonel, one lieutenant colonel, one captain, one headquarters company, one supply company, and such number of guns and howitzer battalions as the President may direct. Nothing shall prevent the assembling, in the same regiment, of gun and howitzer battalions of different calibres and classes.

Each gun or howitzer battery shall consist of one captain, two first lieutenants, two second lieutenants, one first sergeant, one supply sergeant, one stable sergeant, one mess sergeant, six sergeants, thirteen corporals, one chief mechanic, one saddler, two horseshoers, one mechanic, two buglers, three cooks, twenty-two privates (first class), and seventy-one privates. When no enlisted men of the Quartermaster Corps are attached for such positions there shall be added to each battery of mountain artillery one packmaster (sergeant, first class) one assistant packmaster (sergeant), and one cargador (corporal).

Each headquarters company of a regiment of two battalions shall consist of one captain, one first lieutenant, one regimental sergeant major, two battalion sergeants major, one first sergeant, two color sergeants, one mess sergeant, one supply sergeant, one stable sergeant, two sergeants, nine corporals, one horseshoer, one saddler, one mechanic, three buglers, two cooks, five privates (first class), fifteen privates, one band leader, one assistant band leader, one sergeant bugler, two band sergeants, for band corporals, two musicians (first class), four musicians (second class), and thirteen musicians (third class). That when a regiment consists of three battalions there shall be added to the headquarters company one battalion sergeant major, one sergeant, three corporals, one bugler, one private (first class), and five privates. When no enlisted men of the Quartermaster Corps is attached for such positions, there shall be added to each mountain artillery headquarters company one packmaster (sergeant, first class), one assistant packmaster (sergeant), and one cargador (corporal).

Each supply company of a regiment of two battalions shall consist of one captain, one first lieutenant, two regimental supply sergeants, one first sergeant, one mess sergeant, one corporal, one cook, one horseshoer, one saddler, two privates, and one wagoner for each authorized wagon of the field train. When a regiment consists of three battalions there shall be added to the supply company one second lieutenant, one regimental supply sergeant, one private, and one wagoner for each additional authorized wagon of the field train.

Each gun or howitzer battalion shall consist of one major, one captain, and batteries as follows: Mountain artillery battalions and light artillery gun or howitzer battalions serving with the field artillery or Infantry divisions shall contain three batteries; horse artillery battalions and heavy field artillery gun or howitzer battalions shall contain two batteries: *Provided*, That the President may, in his discretion, increase the headquarters company of a regiment of two battalions by two sergeants, five corporals, one horseshoer, one mechanic, one private (first class), and six privates; the headquarters company of a regiment of three battalions by one sergeant, seven corporals, one horseshoer, one mechanic, two cooks, two privates (first class), and seven privates; the supply company of a regiment of two battalions by one corporal, one cook, one horseshoer, and one saddler; the supply company for a regiment of three battalions by one corporal, one cook, one horseshoer, and one saddler, a gun or howitzer battery by three sergeants, seven corporals, one horseshoer, two mechanics, one bugler, thirteen privates (first class), and thirty-seven privates. [39 Stat. L. 179.]

For Act of April 25, 1914, mentioned above, see 1916 Supp. Fed. Stat. Ann. 289.

SEC. 20. [Coast Artillery Corps.] The Coast Artillery Corps shall consist of one Chief of Coast Artillery, with the rank of brigadier general; twenty-four colonels; twenty-four lieutenant colonels; seventy-two majors; three hundred and sixty captains; three hundred and sixty first lieutenants; three hundred and sixty second lieutenants; thirty-one sergeants major, senior grade; sixty-four sergeants major, junior grade; forty-one master electricians; seventy-two engineers; ninety-nine electrician sergeants, first class; two hundred and seventy-five assistant engineers; ninety-nine electrician sergeants, second class; one hundred and six firemen; ninety-three radio sergeants; sixty-two master gunners; two hundred and sixty-three first sergeants; two hundred and sixty-three supply sergeants; two hundred and sixty-three mess sergeants; two thousand one hundred and four sergeants; three thousand one hundred and fifty-six corporals; five hundred and twenty-six cooks; five hundred and twenty-six mechanics; five hundred and twenty-six buglers; five thousand two hundred and twenty-five privates, first class; fifteen thousand six hundred and seventy-five privates; and eighteen bands, organized as hereinbefore provided for the Engineer band. The rated men of the Coast Artillery Corps shall consist of casemate electricians; observers, first class; plotters; chief planters; coxswains; chief loaders; observers, second class; gun commanders and gun pointers. The total number of rated men shall not exceed one thousand seven hundred and eighty-four. Coxswains shall receive \$9 per month in addition to the pay of their grade. [39 Stat. L. 180.]

SEC. 21. [**Porto Rico Regiment of Infantry.**] The Porto Rico Regiment of Infantry of the United States Army shall hereafter have the same organization, and the same grades and numbers of commissioned officers and enlisted men, as are by this Act or shall hereafter be prescribed by law for other regiments of Infantry of the Army. All vacancies created by this Act or occurring hereafter in commissioned offices of said regiment above the grade of second lieutenant below the grade of colonel shall, except as hereinafter provided to the contrary, be filled by promotion according to seniority in the several grades and within the regiment, subject to the examination prescribed by section three of the Act of Congress approved October first, eighteen hundred and ninety, and said section is hereby extended so as to apply in the cases of all officers below the grade of lieutenant colonel, who shall hereafter be examined for promotion in the Porto Rico Regiment of Infantry, except that the President may prescribe such a system of examination for the promotion of officers of said regiment as he may deem advisable. The colonel of said regiment shall be detailed by the President, from among officers of Infantry of the Army not below the grade of lieutenant colonel, for a period of four years unless sooner relieved. Vacancies created by this Act in the grades of lieutenant colonel and major in said regiments shall be filled by appointments from the senior captains in regimental rank of the Porto Rico regiment mentioned in the Act of March fourth, nineteen hundred and fifteen; and captains and lieutenants of said regiment shall also be eligible for such detached service, transfer, or assignment to duty with other organizations as may be approved by the Secretary of War; but vacancies created by such detachment of officers shall not be filled by promotions or appointments.

All men hereafter enlisting in said regiment shall be natives of Porto Rico. All enlistments in the regiment shall hereafter be the same as is provided herein for the Regular Army, and the regiment, or any part thereof, may be ordered for service outside the island of Porto Rico. The pay and allowances of members of said regiment shall be the same as provided by law for officers and enlisted men of like grades in the Regular Army.

Vacancies created by this Act or occurring hereafter in the grade of second lieutenant in said regiment shall be filled during any calendar year by the appointment by the President, by and with the advice and consent of the Senate, of any native of Porto Rico graduated from the United States Military Academy, and, after such appointment shall have been made or provided for, by like appointment of native citizens of Porto Rico between twenty-one and twenty-seven years of age.

Provided, That officers of the Porto Rico Regiment of Infantry, United States Army, who held commissions in the Porto Rico Provisional Regiment of Infantry on June thirtieth, nineteen hundred and eight, shall now and hereafter take rank in their grades in the same relative order held by them in said Porto Rico Provisional Regiment of Infantry on June thirtieth, nineteen hundred and eight, subject to any loss in rank due to failure to pass examinations for promotion or to sentence of court-martial. [39 Stat. L. 180.]

For Act of Oct. 1, 1890, mentioned above, see 7 Fed. Stat. Ann. 997.

For Act of March 4, 1914, mentioned above, see 1916 Supp. Fed. Stat. Ann. 302.

SEC. 22. [Laws remaining in force.] All existing laws pertaining to or affecting the United States Military Academy and civilian or military personnel on duty thereat in any capacity whatever, the officers and enlisted men on the retired list, the detached and additional officers under the Act of Congress approved March third, nineteen hundred and eleven, recruiting parties, recruit depots and unassigned recruits, service school detachments, United States disciplinary barracks, guards, disciplinary organizations, the Philippine Scouts, and Indian scouts shall continue and remain in force except as herein specifically provided otherwise: *Provided*, That one of the enlisted men at each main recruiting station who has been detached for duty at such station under the provisions of the Act of Congress approved February second, nineteen hundred and one, may, in the discretion of the Secretary of War, have the rank, pay, and allowances of a first sergeant of Infantry. [*39 Stat. L. 181, as amended by 40 Stat. L. —.*]

This section was amended by the Act of July 9, 1918, ch. 17, § 2. The amendment added the proviso.

For the Act of March 3, 1911, mentioned above, see 1912 Fed. Stat. Ann. 407.

For the Act of Feb. 2, 1901, mentioned above, see 7 Fed. Stat. Ann. 948.

SEC. 23. [Original appointments to be provisional.] Hereafter all appointments of persons other than graduates of the United States Military Academy to the grade of second lieutenant in the Regular Army shall be provisional for a period of two years, at the close of which period such appointments shall be made permanent if the appointees shall have demonstrated, under such regulations as the President may prescribe, their suitability and moral, professional, and physical fitness for such permanent appointment, but should any appointee fail so to demonstrate his suitability and fitness, his appointment shall terminate; and should any officer become eligible for promotion to a vacancy in a higher grade and qualify therefor before the expiration of two years from the date of his original appointment, he shall receive a provisional appointment in such higher grade, which appointment shall be made permanent when he shall have qualified for permanent appointment upon the expiration of two years from the date of his original appointment, or shall terminate if he shall fail so to qualify.

Should any such officer during such provisional period of two years become incapable of performing the duties of his office by reason of physical incapacity resulting from an incident of service, he shall be retired from active service by the President upon the actual rank held by him at the time of retirement in the manner provided by law for the retirement of permanent officers of the Regular Army, and provisional officers retired under the provisions of this section shall be in addition to the number of the officers of the Army on the retired list now fixed by law. [*39 Stat. L. 181, as amended by 40 Stat. —.*]

This section was amended to read as here given by the Army Appropriation Act of July 9, 1918, ch. —. The amendment added the second paragraph.

SEC. 24. [Increase to be made in five increments.] Except as otherwise specifically provided by this Act, the increases in the commissioned and enlisted personnel of the Regular Army provided by this Act shall be made in five annual increments, each of which shall be, in each grade of each arm, corps, and department, as nearly as practicable, one-fifth of the

total increase authorized for each arm, corps, and department. Officers promoted to vacancies created or caused by the addition of the first increment shall be promoted to rank from July first, nineteen hundred and sixteen, and those promoted to vacancies created or caused by the second increment shall be promoted to rank from July first, nineteen hundred and seventeen; those promoted to vacancies created or caused by the addition of the third increment shall be promoted to rank from July first, nineteen hundred and eighteen; those promoted to vacancies created or caused by the addition of the fourth increment shall be promoted to rank from July first, nineteen hundred and nineteen; and those promoted to vacancies created or caused by the addition of the fifth increment shall be promoted to rank from July first, nineteen hundred and twenty: *Provided*, That in the event of actual or threatened war or similar emergency in which the public safety demands it the President is authorized to immediately organize the entire increase authorized by this Act, or so much thereof as he may deem necessary, and when, in the judgment of the President, war becomes imminent, all of said organizations that shall then be below the maximum enlisted strength authorized by law shall be raised forthwith to that strength, and shall be maintained as nearly as possible thereat so long as war, or the imminence of war, shall continue.

Vacancies in the grade of second lieutenant, however, arising, in any fiscal year shall be filled by appointment in the following order: (1) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they were graduated; (2) under the provisions of existing law of enlisted men, including officers of Philippine Scouts, between the ages of twenty-one and thirty-four years, whose fitness for promotion shall have been determined by competitive examination; and of members, including officers, of the Organized Militia, the National Guard, or Naval Militia, between the ages of twenty-one and thirty-four years who have had at least ninety days' actual Federal military service during the calendar year nineteen hundred and sixteen, or subsequent thereto, and whose fitness for promotion shall have been determined by examination; (3) of commissioned officers of the National Guard, between the ages of twenty-one and twenty-seven years, not otherwise provided for herein; (4) of members of the Officers' Reserve Corps, between the ages of twenty-one and twenty-seven years; (5) of such honor graduates, between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (6) of candidates from civil life, between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect: *Provided*, That the President is hereby authorized to waive the maximum age limit prescribed by law for appointment as second lieutenant in the Regular Army in the case of any candidate for such appointment who has successfully completed or who may hereafter successfully complete the required examination for such appointment before arriving at the prescribed maximum age limit; but no appointment of any such candidate shall be made to any vacancy which did not exist upon the date he successfully completed the required examination for appointment; and persons appointed under the

provisions of this proviso shall be appointed with the rank and date of rank with which they would have been appointed if their appointment had not been prevented by reason of the maximum age limit prescribed by law: *Provided further*, That appointments to the grade of second lieutenant in the Corps of Engineers including those created by this Act, shall continue to be made as now provided by law, but that officers of the Army or Navy of the United States may become candidates for said appointments under the provisions of section five of the Act of Congress approved February twenty-seventh, nineteen hundred and eleven, without previously vacating their commissions as officers and that the Secretary of War may, in his discretion, allow persons to become candidates without previously establishing eligibility for appointment as junior engineer under the Engineer Bureau of the War Department: *Provided further*, That officers appointed to original vacancies in the grade of second lieutenant created or caused by this Act shall take lineal and relative rank according to dates of appointment, and the lineal and relative rank of second lieutenants appointed on the same date shall be determined under such regulations as the Secretary of War may prescribe: *Provided further*, That the President may recommission persons who have heretofore held commissions in the Regular Army and have left the service honorably, after ascertaining that they are qualified for service physically, morally, and as to age and military fitness; such recommissioned officers shall take rank at the foot of the respective grades which they held at the time of their separation from the Army: *Provided further*, That the provisions of existing law requiring examinations to determine fitness for promotion of officers of the Army are hereby extended to include promotions to all grades below that of brigadier general: *Provided further*, That examinations of officers in the grades of major and lieutenant colonel shall be confined to problems involving the higher functions of staff duties and command: *And provided further*, That in time of war retired officers of the Army may be employed on active duty, in the discretion of the President, and when so employed they shall receive the full pay and allowances of their grade: *And provided further*, That hereafter any retired officer, who has been or shall be detailed on active duty, shall receive the rank, pay, and allowances of the grade, not above that of colonel, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement.

That the President be, and he is hereby, authorized to waive the age limit in all cases where the candidate for second lieutenant, who being within the maximum age limit at the date of examination has passed or may pass the examination, and who has become or may become ineligible on account of age before the date of his appointment; and to appoint such candidate with rank from the same date as other candidates of like class who have been or may be appointed as the result of the same examination: *Provided*, That such appointment is made within one year from the date of such examination. [39 Stat. L. 182, as amended by 40 Stat. L. 40; 40 Stat. L. —.]

This section was amended to read as here given by the Act of May 12, 1917, ch. 12, entitled "An Act making appropriations for the support of the Army for the fiscal

year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," and also by the Act of July 9, 1918, ch. 17, §§ 3, 4. The former Act added the last paragraph, and amended the first part of the second paragraph down to the first proviso, and the latter Act amended the second paragraph down to the second proviso, and substituted "colonel" for "major" in the last proviso of said paragraph. The second paragraph down to the second proviso originally read as follows:

"Vacancies in the grade of second lieutenant, created or caused by the increases due to this Act, in any fiscal year shall be filled by appointment in the following order: (1) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they were graduated; (2) under the provisions of existing law, of enlisted men, including officers of the Philippine Scouts, whose fitness for promotion shall have been determined by competitive examination; (3) of members of the Officers' Reserve Corps between the ages of twenty-one and twenty-seven years; (4) of commissioned officers of the National Guard between the ages of twenty-one and twenty-seven years; (5) of such honor graduates, between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (6) of candidates from civil life between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect: *Provided*, That any such original vacancies not so filled, and remaining at the time of graduation of any class at the United States Military Academy, may be filled by the appointment of members of that class; and all vacancies in the grade of second lieutenant not created or caused by the increases due to this Act shall be filled as provided in the Act making appropriation for the support of the Army, approved March third, nineteen hundred and eleven: *Provided further*, That enlisted men of the Regular Army who have completed one year's service with an organization may become candidates for vacancies in the grade of second lieutenant created or caused by the increases due to the operation of this Act."

The amendment of May 12, 1917, affecting the second paragraph under it, made it read as follows:

"Vacancies in the grade of second lieutenant created or caused by the increases due to this Act, in any fiscal year shall be filled by appointment in the following order: (First) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they graduated; (second) under the provisions of existing law of enlisted men, including officers of Philippine Scouts, between the ages of twenty-one and thirty-four years, whose fitness for promotion shall have been determined by competitive examination; and of members, including officers, of the Organized Militia, the National Guard, or Naval Militia, between the ages of twenty-one and thirty-four years who have had at least ninety days actual Federal military service under any call of the President during the calendar year nineteen hundred and sixteen, and whose fitness for promotion shall have been determined by examination; (third) of members of the Officers Reserve Corps between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (sixth) of candidates from civil life between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect."

The Army Appropriation Act of May 12, 1917, ch. 12, 40 Stat. L. 40, contains a provision affecting this section, which reads as follows:

"That section twenty-four of the national-defense Act approved June third, nineteen hundred and sixteen, is so amended as to authorize the President to organize immediately the whole of the increase in the Ordnance Department authorized by section twelve of said Act, or such part thereof as he may deem necessary."

The Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, contains a provision affecting this section, which will be found set out *infra*, p. 970, third par.

SEC. 25. [The detached officers.] That on July first, nineteen hundred and sixteen, the line of the Army shall be increased by eight hundred and twenty-two extra officers of the Cavalry, Field Artillery, Coast Artillery Corps, and Infantry arms of the service, of grades from first lieutenant to colonel, inclusive, lawfully available for detachment from their proper arms for duty with the National Guard, or other duty, the usual period of which exceeds one year. Said extra officers, together with the two hundred detached officers provided for by the Act of Congress approved March

third, nineteen hundred and eleven, shall, on and after July first, nineteen hundred and sixteen, constitute the Detached Officers' List, and all positions vacated by officers assigned to said list, and the officers so assigned, shall be subject to the provisions of section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, with reference to details to the staff corps. The total number of officers hereby authorized for each grade on said list entire shall be in proportion to the total number of officers of the corresponding grade now authorized by law other than this Act for all of the said four arms combined, exclusive of second lieutenants and of the two hundred extra officers authorized by the Act of Congress approved March third, nineteen hundred and eleven, and exclusive also of the additional officers authorized by the Act to restore lineal rank lost through the system of regimental promotion formerly in force; and the total number of officers hereby authorized for each grade in each of said arms on said list shall be in the proportion borne by the number of officers now authorized by law other than this Act for such grade and arm to the total number of officers now authorized by law other than this Act for the corresponding grade in all of the said four arms combined, exclusive of the extra and additional officers last hereinbefore specified and excluded: *Provided*, That all vacancies created or caused by the foregoing provisions of this section in grades above that of second lieutenant shall be filled by promotion according to law existing on and before the date of approval of this Act, and subject to the examinations prescribed by existing law. As soon as practicable after such promotions shall have been made, there shall be detached from each arm and assigned to the Detached Officers' List a number of officers of each grade equal to the number of officers of said grade by which said arm shall have been increased by the foregoing provisions of this section; and thereafter any vacancy created or caused in any of the said arms of the service by the assignment of an officer of any grade to said Detached Officers' List shall be filled, subject to such examination as is now or may hereafter be prescribed by law, by the promotion of the officer who shall be the senior in length of commissioned service of those eligible to promotion in the next lower grade in the arm in which such vacancy shall occur: *Provided further*, That no officer of any of said arms of the service shall be permitted to remain on said Detached Officers' List for more than forty-five days unless he shall have been actually present for duty for at least two years out of the last preceding six years with an organization composed of one or more statutory units, or the equivalent thereof, of the arm to which he shall belong. Any vacancy created in said list by the removal of any officer therefrom because he shall not have been present for duty as before prescribed in this proviso shall be filled by the transfer to said list of an officer having the same grade and belonging to the same arm as the officer whose removal from said list shall have created said vacancy; but, except as before prescribed in this proviso, all officers who shall have been assigned to said list shall remain thereon for not less than four years from the respective dates of their assignment thereto, unless in the meantime they shall have been separated entirely from the Army, or shall have been promoted or appointed to higher offices, or shall have been retired from active service: *Provided further*, That after the apportionment of officers to said Detached Officers' List shall

have been made as authorized by this Act, whenever any vacancy shall have been caused in said list by the separation of an officer of any grade therefrom, such vacancy shall, except as prescribed in the last preceding proviso, be filled by the detail and assignment to said list of an officer of the corresponding grade in that arm in which there shall be found the officer of the next lower grade who at that time shall be the senior in length of commissioned service of all the officers of the said lower grade in all of the four arms hereinbefore specified; if two or more officers of different arms shall be found to have equal seniority in length of commissioned service in said lower grade, the question of seniority shall be decided by their relative standing on the list of the commissioned officers of the Army: *Provided further*, That, with a view further to equalize inequalities in past promotions of officers of the line of the Army, on July first, nineteen hundred and sixteen, the Cavalry shall be increased by seventeen colonels, and the Infantry by four colonels, all of whom shall be additional officers in that grade, and shall not bar nor retard the promotion to which any officer would be entitled if the appointment of the said additional officers had never been authorized; and after July first, nineteen hundred and nineteen, no vacancies occurring among the said additional officers shall be filled and the offices so vacated shall cease and determine: *And provided further*, That for the purpose of lessening as much as possible inequalities of promotion due to the increase in the number of officers of the line of the Army under the provisions of this Act, any vacancies created or caused by this Act in commissioned grades below that of lieutenant colonel in any arm of said line may, in the discretion of the President and under such regulations as he may prescribe in furtherance of the purpose stated in this proviso, be filled by the promotion or transfer without promotion of officers of other branches of the line of the Army; but no such promotion or transfer shall be made in the case of any officer unless it shall have been recommended by an examining board composed of five officers, senior in rank to such officer, and of the arm to which the promotion or transfer of such officer shall have been proposed, who, after having made a personal examination of such officer and of his official record, shall have reported him qualified for service in said arm in the grade to which his promotion or transfer shall have been proposed. [39 Stat. L. 183.]

This section is affected by a provision in the Army Appropriation Act of May 12, 1917, ch. 12, 40 Stat. L. 40. The provision is set out *infra*, p. 1004.

This section is also affected by a provision in the Army Appropriation Act of Aug. 29, 1916, ch. 418, 39 Stat. L. 619. The provision is set out *infra*, p. 970.

For Act of March 3, 1911, see 1912 Supp. Fed. Stat. Ann. 407.

For Act of Feb. 2, 1901, § 27, see 7 Fed. Stat. Ann. 1000.

SEC. 26. [Retirement of officers of Philippine Scouts.] Captains and lieutenants of Philippine Scouts who are citizens of the United States shall hereafter be entitled to retirement under the laws governing the retirement of enlisted men of the Regular Army, except that they shall be retired in the grade held by them at the date of retirement, shall be entitled to retirement for disability under the same conditions as officers of the Regular Army, and that they shall receive, as retired pay, the amounts allowed by law, as retired pay and allowances, of master signal electricians of the United States Army, and no more: *Provided*. That double time for service beyond the continental limits of the United States shall not be counted

for the purposes of this section so as to reduce the actual period of service below twenty years: *Provided further*, That former officers of the Philippine Scouts who, because of disability occasioned by wounds received in action, have resigned, or been discharged from the service, or who have heretofore served as such for a period of more than five years and have been retired as enlisted men, shall be placed upon the retired list as officers of Philippine Scouts and thereafter receive the retired pay and allowances provided by this section for other officers of Philippine Scouts: *And provided further*, That any former officer of Philippine Scouts who vacated his office in the Philippine Scouts by discharge or resignation on account of disability contracted in the line of duty and who was subsequently retired as an enlisted man, except any former officer of Philippine Scouts who has been retired as an enlisted man by special Act of Congress, shall be transferred to the retired list created by this section and shall thereafter receive the retired pay and allowances authorized by this section, and no more. Officers of Philippine Scouts retired under the provisions of this section shall not form part of the limited retired list now authorized by law. [39 Stat. L. 185.]

SEC. 27. [Enlistments in the Regular Army.] On and after the first day of November, nineteen hundred and sixteen, all enlistments in the Regular Army shall be for a term of seven years, the first three years to be in the active service with the organizations of which those enlisted form a part and, except as otherwise provided herein, the last four years in the Regular Army Reserve hereinafter provided for: *Provided*, That at the expiration of three years' continuous service with such organizations, either under a first or any subsequent enlistment, any soldier may be reenlisted for another period of seven years, as above provided for, in which event he shall receive his final discharge from his prior enlistment: *Provided further*, That after the expiration of one year's honorable service any enlisted man serving within the continental limits of the United States whose company, troop, battery, or detachment commander shall report him as proficient and sufficiently trained may, in the discretion of the Secretary of War, be furloughed to the Regular Army Reserve under such regulations as the Secretary of War may prescribe, but no man furloughed to the reserve shall be eligible to reenlist in the service until the expiration of his term of seven years: *Provided further*, That in all enlistments hereafter accomplished under the provisions of this Act three years shall be counted as an enlistment period in computing continuous-service pay: *Provided further*, That any noncommissioned officer discharged with an excellent character shall be permitted, at the expiration of three years in the active service, to reenlist in the organization from which discharged with the rank and grade held by him at the time of his discharge if he reenlists within twenty days after the date of such discharge: *Provided further*, That no person under the age of eighteen years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians, provided that such minor has such parents or guardians entitled to his custody and control: *And provided further*, That the President is authorized in his discretion to utilize the services of postmasters of the second, third, and fourth classes in procuring the enlistment of recruits for the Army[.]

In addition to military training, soldiers while in the active service shall hereafter be given the opportunity to study and receive instruction upon educational lines of such character as to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations. Civilian teachers may be employed to aid the Army officers in giving such instruction, and part of this instruction may consist of vocational education either in agriculture or the mechanic arts. The Secretary of War, with the approval of the President, shall prescribe rules and regulations for conducting the instruction herein provided for, and the Secretary of War shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered as may in his judgment be consistent with the requirements of military instruction and service of the soldiers. [39 Stat. L. 185, as amended by 40 Stat. L. —.]

This section was amended by the Postal Service Appropriation Act of July 2, 1918, § 11, which repealed a provision at the end of the first paragraph authorizing the payment of \$5 to postmasters at second, third, and fourth class offices for each recruit secured by them and accepted by the Army. The repealed provision read as follows: "and for each recruit accepted for enlistment in the Army, the postmaster procuring his enlistment shall receive the sum of \$5."

Enlistment of minor—Voidable by parent.—An enlistment in the army by a minor without his parent's consent is valid and binding as to the minor, but voidable on the application of the parent. *Ex p. Avery*, (E. D. N. C. 1916) 235 Fed. 248; *Ex p. Winfield*, (E. D. Va. 1916) 236 Fed. 552; *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056; *Hoskins v. Pell*, (C. C. A. 5th Cir. 1917) 239 Fed. 279, 152 C. C. A. 267, L. R. A. 1917D 1053; *U. S. v. Brown*, (E. D. Pa. 1917) 242 Fed. 983; *Ex p. Rush*, (M. D. Ala. 1917) 246 Fed. 172.

Enlistment in National Guard.—It has been questioned whether the right of the parents or guardian to the discharge of a minor obtains when the minor has enlisted in the National Guard which has subsequently been mustered into federal service. In *Ex p. Winfield*, (E. D. Va. 1916) 236 Fed. 552, it was held that no such right existed. The contrary, however, was held in *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056.

In *Ex p. Avery*, (E. D. N. C. 1916) 235 Fed. 248, the question was raised but no decision was made, since the minor had not enlisted until after the National Guard had been mustered into federal service.

Pending prosecution for military offense.—As the enlistment of a minor is valid as to him, any military offense committed by him after or in connection with his enlistment may be punished; and the fact that he enlisted without his parents' consent, or that, after the military authorities have instituted proceedings

against him, his parent has instituted legal proceedings for his release, does not deprive the military authorities of the power to punish. *U. S. v. Brown*, (E. D. Pa. 1917) 242 Fed. 983.

Pending prosecution for fraudulent enlistment.—With respect of the right of a minor to be discharged from the army after he has been charged by the military authorities with fraudulent enlistment, there appears to be some conflict of opinion. It has been held if the charges were made, but not acted on prior to the petition for a writ of habeas corpus, that the jurisdiction of the civil court was paramount and that the discharge would be granted. *Ex p. Avery*, (E. D. N. C. 1916) 235 Fed. 248. On the contrary however it has been held that the minor will not be relieved from punishment by the military authorities by habeas corpus even though military proceedings were not instituted until after the service of the writ. *U. S. v. Willford*, (C. C. A. 2d Cir. 1915) 220 Fed. 291, 136 C. C. A. 273; *Ex p. Lewkowitz*, (S. D. N. Y. 1908) 163 Fed. 646; *In re Lessard*, (C. C. N. H. 1905) 134 Fed. 305; *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056; *Ex p. Foley*, (W. D. Ky. 1917) 243 Fed. 470, which latter case held that the contrary holding of *In re Carver*, (C. C. Me. 1900) 103 Fed. 624, and *Ex p. Houghton*, (C. C. Me. 1904) 129 Fed. 239, should be regarded as overruled.

Pending prosecution for desertion.—Where a minor falsely representing himself to be over eighteen years of age takes the oath of enlistment and immediately returns to his home without having

done or received anything as a soldier, he cannot be considered as a deserter, for he is debarred by the statutes from becoming a soldier and cannot change his status by enlistment, although he might validate

his enlistment by continuing in the service until he reached the prescribed age. *Hoskins v. Pell*, (C. C. A. 5th Cir. 1917) 239 Fed. 279, 152 C. C. A. 267, L. R. A. 1917D 1053.

SEC. 28. [Pay of certain enlisted men.] Hereafter the monthly pay of enlisted men of certain grades of the Army created in this Act shall be as follows, namely: Quartermaster sergeant, senior grade, Quartermaster Corps; master hospital sergeant, Medical Department; master engineer, senior grade, Corps of Engineers; and band leader, Infantry, Cavalry, Artillery, and Corps of Engineers, \$75; hospital sergeant, Medical Department; and master engineer, junior grade, Corps of Engineers, \$65; sergeant, first class, Medical Department, \$50; sergeant, first class, Corps of Engineers; regimental supply sergeant, Infantry, Cavalry, Field Artillery, and Corps of Engineers; battalion supply sergeant, Corps of Engineers; and assistant engineer, Coast Artillery Corps, \$45; assistant band leader, Infantry, Cavalry, Artillery, and Corps of Engineers; and sergeant bugler, Infantry, Cavalry, Artillery, and Corps of Engineers, \$40; musician, first class, Infantry, Cavalry, Artillery, and Corps of Engineers; supply sergeant, mess sergeant, and stable sergeant, Corps of Engineers; sergeant Medical Department, \$36; supply sergeant, Infantry, Cavalry, and Artillery; mess sergeant, Infantry, Cavalry, and Artillery; cook, Medical Department; horseshoer, Infantry, Cavalry, Artillery, Corps of Engineers, Signal Corps, and Medical Department; stable sergeant, Infantry and Cavalry; radio sergeant, Coast Artillery Corps; and musicians, second class, Infantry, Cavalry, Artillery, and Corps of Engineers, \$30; musician, third class, Infantry, Cavalry, Artillery, and Corps of Engineers; corporal, Medical Department, \$24; saddler, Infantry, Cavalry, Field Artillery, Corps of Engineers, and Medical Department; mechanic, Infantry, Cavalry, and Field Artillery, and Medical Department; farrier, Medical Department; and wagoner, Infantry, Field Artillery, and Corps of Engineers, \$21; private, first class, Infantry, Cavalry, Artillery, and Medical Department, \$18; private, Medical Department, and bugler, \$15. Nothing herein contained shall operate to reduce the pay or allowances now authorized by law for any grade of enlisted men of the Army: *Provided*, That enlisted men who are now qualified, or who may hereafter qualify, as expert military telegraphers, shall receive \$5 a month; as first-class military telegraphers, \$3 a month; as military telegraphers, \$2 a month; all in addition to their pay, under such regulations as the Secretary of War may prescribe, but no enlisted man shall receive at the same time additional pay for more than one of the classifications named. [*39 Stat. L. 186, as amended by 40 Stat. L. —.*]

This section was amended by the Act of July 9, 1918, ch. 17, § 5. The amendment consisted in adding the proviso.

SEC. 29. [Final discharge of enlisted men.] No enlisted man in the Regular Army shall receive his final discharge until the termination of his seven-year term of enlistment except upon reenlistment as provided for in this Act or as provided by law for discharge prior to expiration of term of

enlistment, but when an enlisted man is furloughed to the Regular Army Reserve his account shall be closed and he shall be paid in full to the date such furlough becomes effective, including allowances provided by law for discharged soldiers: *Provided*, That when by reason of death or disability of a member of the family of an enlisted man occurring after his enlistment members of his family become dependent upon him for support, he may, in the discretion of the Secretary of War, be discharged from the service of the United States or be furloughed to the Regular Army Reserve, upon due proof being made of such condition: *Provided further*, That when an enlisted man is discharged by purchase while in active service he shall be furloughed to the Regular Army Reserve, unless, in the discretion of the Secretary of War, he is given a final discharge from the Army. [39 Stat. L. 187.]

SEC. 30. [Composition of the Regular Army Reserve.] The Regular Army Reserve shall consist of, first, all enlisted men now in the Army Reserve or who shall hereafter become members of the Army Reserve under the provisions of existing law; second, all enlisted men furloughed to or enlisted in the Regular Army Reserve under the provisions of this Act; and, third, any person holding an honorable discharge from the Regular Army with character reported at least good who is physically qualified for the duties of a soldier and not over forty-five years of age who enlists in the Regular Army Reserve for a period of four years. [39 Stat. L. 187.]

SEC. 31. [Regular Army Reserve — assignments — enlistments — pay.] The President is authorized to assign members of the Regular Army Reserve as reserves to particular organizations of the Regular Army, or to organize the Regular Army Reserve, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe, and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps herein provided for; and he may summon the Regular Army Reserve or any part thereof for field training for a period not exceeding fifteen days in each year, the reservists to receive from the date of their departure to place where ordered pay and allowances at the rate of their respective grades in the Regular Army, transportation, and reimbursement of cost of subsistence at such rate as may be fixed by the Secretary of War during travel from home to place where ordered and return to home, and subsistence in kind during period not in transit and while in service, and in the event of actual or threatened hostilities he may mobilize the Regular Army Reserve in such manner as he may determine, and thereafter retain it, or any part thereof, in active service for such period as he may determine the conditions demand: *Provided*, That all enlistments in the Regular Army, including those in the Regular Army Reserve, which are in force on the date of the outbreak of war shall continue in force for one year, unless sooner terminated by order of the Secretary of War, but nothing herein shall be construed to shorten the time of enlistment prescribed: *Provided further*, That subject to such regulations as the President may prescribe for their proper identification, and location, and physical condition, the members of the Regular Army

Reserve shall be paid semi-annually at the rate of \$24 a year while in the reserve. [*39 Stat. L. 187, as amended by 40 Stat. L. —.*]

This section was amended by the Act of July 9, 1918, ch. 17, § 6. The amendment substituted the words "from the date of their departure . . . and while in service" for the words "travel expenses and pay at the rate of their respective grades in the Regular Army during such periods of training."

SEC. 32. [Regular Army Reserve in time of war.] When mobilized by order of the President, the members of the Regular Army Reserve shall, so long as they may remain in active service, receive the pay and allowances of enlisted men of the Regular Army of like grades: *Provided*, That any enlisted man who shall have reenlisted in the Regular Army Reserve shall receive during such active service the additional pay now provided by law for enlisted men in his arm of the service in the second enlistment period: *Provided further*, That upon reporting for duty, and being found physically fit for service, members of the Regular Army Reserve shall receive a sum equal to \$3 per month for each month during which they shall have belonged to the reserve, as well as the actual necessary cost of transportation and subsistence from their homes to the places at which they may be ordered to report for duty under such summons: *And provided further*, That service in the Regular Army Reserve shall confer no right to retirement or retired pay, and members of the Regular Army Reserve shall become entitled to pension only through disability incurred while on active duty in the service of the United States. [*39 Stat. L. 188.*]

SEC. 33. [Use of other departments of the Government.] The President may, subject to such rules and regulations as in his judgment may be necessary, utilize the services of members and employees of all departments of the Government of the United States, without expense to the individual reservist, for keeping in touch with, paying, and mobilizing the Regular Army Reserve, the Enlisted Reserve Corps, and other reserve organizations. [*39 Stat. L. 188.*]

SEC. 34. [Reenlistment in time of war.] For the purpose of utilizing as an auxiliary to the Regular Army Reserves the services of men who have had experience and training in the Regular Army, or in the United States Volunteers, outside of the continental limits of the United States, in time of actual or threatened hostilities, and after the President shall, by proclamation, have called upon honorably discharged soldiers of the Regular Army to present themselves for reenlistment therein within a specified period, subject to such conditions as may be prescribed, any person who shall have been discharged honorably from said Army, with character reported as at least good, and who, having been found physically qualified for the duties of a soldier, if not over fifty years of age, shall reenlist in the line of said Army, or in the Signal, Quartermaster, or Medical Department thereof, within the period that shall be specified in said proclamation, shall receive on so reenlisting a bounty which shall be computed at the rate of \$8 for each month for the first year of the period that shall have elapsed since his last discharge from the Regular Army and the date of his reenlistment therein under the terms of said proclamation; at the

rate of \$6 per month for the second year of such period; at the rate of \$4 per month for the third year of such period; and at the rate of \$2 per month for any subsequent year of such period; but no bounty in excess of \$300 shall be paid to any person under the terms of this section. [39 Stat. L. 188.]

SEC. 35. [Enlisted men prohibited from civil employment.] Hereafter no enlisted man in the active service of the United States in the Army, Navy, and Marine Corps, respectively, whether a noncommissioned officer, musician, or private, shall be detailed, ordered, or permitted to leave his post to engage in any pursuit, business, or performance in civil life, for emolument, hire, or otherwise, when the same shall interfere with the customary employment and regular engagement of local civilians in the respective arts, trades, or professions. [39 Stat. L. 188.]

SEC. 36. [Sergeants for duty with the National Guard.] For the purpose of assisting in the instruction of the personnel and care of property in the hands of the National Guard the Secretary of War is authorized to detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army not to exceed one thousand sergeants for duty with corresponding organizations of the National Guard and not to exceed one hundred sergeants for duty with the disciplinary organizations at the United States Disciplinary Barracks, who shall be additional to the sergeants authorized by this Act for the corps, companies, troops, batteries, and detachments from which they may be detailed.

SEC. 37. [The Officers' Reserve Corps.] For the purpose of securing a reserve of officers available for service as temporary officers in the Regular Army, as provided for in this Act and in section eight of the Act approved April twenty-fifth, nineteen hundred and fourteen, as officers of the Quartermaster Corps and other staff corps and departments, as officers for recruit rendezvous and depots, and as officers of volunteers there shall be organized, under such rules and regulations as the President may prescribe not inconsistent with the provisions of this Act, an Officers' Reserve Corps of the Regular Army. Said corps shall consist of sections corresponding to the various arms, staff corps, and departments of the Regular Army. Except as otherwise herein provided, a member of the Officers' Reserve Corps shall not be subject to call for service in time of peace, and whenever called upon for service shall not, without his consent, be so called in a lower grade than that held by him in said reserve corps.

The President alone shall be authorized to appoint and commission as reserve officers in the various sections of the Officers' Reserve Corps, in all grades up to and including that of major, such citizens as, upon examination prescribed by the President, shall be found physically, mentally, and morally qualified to hold such commissions: *Provided*, That the proportion of officers in any section of the Officers' Reserve Corps shall not exceed the proportion for the same grade in the corresponding arm, corps, or department of the Regular Army, except that the number commissioned in the lowest authorized grade in any section of the Officers' Reserve Corps shall not be limited.

All persons now carried as duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three, shall, for a period of three years after the passage of this Act, be eligible for appointment in the Officers' Reserve Corps in the section corresponding to the arm, corps, or department for which they have been found qualified, without further examination, except for a physical examination, and subject to the limitations as to age and rank herein prescribed: *Provided*, That any person who on June third, nineteen hundred and sixteen, was carried as qualified and registered in the grade of colonel or lieutenant colonel pursuant to the provisions of the Act of January twenty-first, nineteen hundred and three, or any person holding a commission as colonel or lieutenant colonel in the National Guard of any State, Territory, or the District of Columbia on June third, nineteen hundred and sixteen, who has served satisfactorily as such in the service of the United States under the call of May ninth, nineteen hundred and sixteen, or that of June eighteenth, nineteen hundred and sixteen, may be commissioned or recommissioned in the Officers' Reserve Corps with rank for which he had been found qualified and registered, or which he held in the National Guard on June third, nineteen hundred and sixteen, or while in the service of the United States; but when such person shall become thereafter separated from the Officers' Reserve Corps for any reason, the vacancy so caused shall not be filled and such office shall cease and determine: *Provided further*, That any officer of the Officers' Reserve Corps called for service with his consent in a lower grade than that held by him in said Reserve Corps shall, subject to such physical examination as may be prescribed, be considered eligible for recommission in such lower grade.

No person shall, except as hereinafter provided, be appointed or reappointed a second lieutenant in the Officers' Reserve Corps after he shall have reached the age of thirty-two years, a first lieutenant after he shall have reached the age of thirty-six years, a captain after he shall have reached the age of forty years, or a major after he shall have reached the age of forty-five years. When an officer of the Reserve Corps shall reach the age limit fixed for appointment or reappointment in the grade in which commissioned he shall be honorably discharged from the service of the United States, and be entitled to retain his official title and, on occasions of ceremony, to wear the uniform of the highest grade he shall have held in the Officers' Reserve Corps: *Provided*, That nothing in the foregoing provisions as to the ages of officers shall apply to the appointment or reappointment of officers of the Quartermaster, Engineer, Ordnance, Signal, Judge Advocate, and Medical sections of said Reserve Corps.

One year after the passage of this act the Medical Reserve Corps, as now constituted by law, shall cease to exist. Members thereof may be commissioned in the Officers' Reserve Corps, subject to the provisions of this Act, or may be honorably discharged from the service. The Secretary of War may, in time of peace, order first lieutenants of the medical section of the Officers' Reserve Corps, with their consent, to active duty in the service of the United States in such numbers as the public interests may require and the funds appropriated may permit, and may relieve them from such duty when their services are no longer necessary. While on such duty they shall receive the pay and allowances, including pay for periods of sickness and

leaves of absence, of officers of corresponding rank and length of active service in the Regular Army.

The commissions of all officers of the Officers' Reserve Corps shall be in force for a period of five years unless sooner terminated in the discretion of the President. Such officers may be recommissioned, either in the same or higher grades, for successive periods of five years, subject to such examinations and qualifications as the President may prescribe and to the age limits prescribed herein: *Provided*, That officers of the Officers' Reserve Corps shall have rank therein in the various sections of said Reserve Corps according to grades and to length of service in their grades. [39 Stat. L. 189, as amended by 40 Stat. L. —.]

This section was amended to read as here set out by the Army Appropriation Act of May 12, 1917, by substituting the second and third provisos for the following:

"Provided, That any person carried as qualified and registered in the grade of colonel or lieutenant colonel pursuant to the provisions of said Act on the date when this Act becomes effective may be commissioned and recommissioned in the Officers' Reserve Corps with the rank for which he has been found qualified and registered, but when such person thereafter shall become separated from the Officers' Reserve Corps for any reason the vacancy so caused shall not be filled, and such office shall cease and determine."

SEC. 38. [The Officers' Reserve Corps in war.] In time of actual or threatened hostilities the President may order officers of the Officers' Reserve Corps, subject to such subsequent physical examinations as he may prescribe, to temporary duty with the Regular Army in grades thereof which can not, for the time being, be filled by promotion, or as officers in volunteer or other organizations that may be authorized by law, or as officers at recruit rendezvous and depots, or on such other duty as the President may prescribe. While such reserve officers are on such service they shall, by virtue of their commissions as reserve officers, exercise command appropriate to their grade and rank in the organizations to which they may be assigned, and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of active service, as allowed by law for officers of the Regular Army, from the date upon which they shall be required by the terms of their orders to obey the same: *Provided*, That officers so ordered to active service shall take temporary rank among themselves, and in their grades in the organizations to which assigned, according to the dates of orders placing them on active service; and they may be promoted, in accordance with such rank, to vacancies in volunteer organizations or to temporary vacancies in the Regular Army thereafter occurring in the organizations in which they shall be serving: *Provided further*, That officers of the Officers' Reserve Corps shall not be entitled to retirement or retired pay, and shall be entitled to pension only for disability incurred in the line of duty and while in active service.

Any officer who, while holding a commission in the Officers' Reserve Corps, shall be ordered to active service by the Secretary of War shall, from the time he shall be required by the terms of his order to obey the same, be subject to the laws and regulations for the government of the Army of the United States, in so far as they are applicable to officers whose permanent retention in the military service is not contemplated. [39 Stat. L. 190.]

SEC. 39. [**Instruction of officers of the Officers' Reserve Corps.**] To the extent provided for from time to time by appropriations for this specific purpose, the Secretary of War is authorized to order reserve officers to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year, and while so serving such officers shall receive the pay and allowances of their respective grades in the Regular Army: *Provided*, That, with the consent of the reserve officers concerned, and within the limits of funds available for the purpose, such periods of duty may be extended for reserve officers as the Secretary of War may direct: *Provided further*, That in time of actual or threatened hostilities, after all available officers of any section of the Officers' Reserve Corps corresponding to any arm, corps, or department of the Regular Army shall have been ordered into active service, officers of Volunteers may be appointed in such arm, corps, or department as may be authorized by law: *Provided further*, That nothing herein shall operate to prevent the appointment of any officer of the Regular Army as an officer of Volunteers before all the officers of the Officers' Reserve Corps or any section thereof shall have been ordered into active service: *And provided further*, That in determining the relative rank and the right to retirement of an officer of the Regular Army, active duty performed by him while serving in the Officers' Reserve Corps shall not be reckoned. [39 Stat. L. 191.]

SEC. 40. [**The Reserve Officers' Training Corps.**] The President is hereby authorized to establish and maintain in civil educational institutions a Reserve Officers' Training Corps, which shall consist of a senior division organized at universities and colleges requiring four years of collegiate study for a degree, including State universities and those State institutions that are required to provide instruction in military tactics under the provisions of the Act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of colleges where the leading object shall be practical instruction in agriculture and the mechanic arts, including military tactics, and a junior division organized at all other public or private educational institutions, except that units of the senior division may be organized at those essentially military schools which do not confer an academic degree but which, as a result of the annual inspection of such institutions by the War Department, are specially designated by the Secretary of War as qualified for units of the senior division, and each division shall consist of units of the several arms or corps in such number and of such strength as the President may prescribe. [39 Stat. L. 191.]

For Act of July 2, 1862, mentioned above, see 2 Fed. Stat. Ann. 850.

SEC. 41. [**Reserve Officers' Training Corps — establishment in state educational institution.**] The President may, upon the application of any State institution described in section forty of this Act, establish and maintain at such institution one or more units of the Reserve Officers' Training Corps: *Provided*, That no such unit shall be established or maintained at any such institution until an officer of the Army shall have been detailed as professor of military science and tactics, nor until such institution shall maintain under military instruction at least one hundred physically fit male students. [39 Stat. L. 191.]

SEC. 42. [Reserve Officers' Training Corps — establishment in other than state institution.] The President may, upon the application of any established educational institution in the United States other than a State institution described in section forty of this Act, the authorities of which agree to establish and maintain a two years' elective or compulsory course of military training as a minimum for its physically fit male students, which course when entered upon by any student shall, as regards such student, be a prerequisite for graduation, establish and maintain at such institution one or more units of the Reserve Officers' Training Corps: *Provided*, That no such unit shall be established or maintained at any such institution until an officer of the Army shall have been detailed as professor of military science and tactics, nor until such institution shall maintain under military instruction at least one hundred physically fit male students: *Provided further*, That upon the recommendation of the professor of military science and tactics of any such institution, the authorities thereof may discharge a member of the Reserve Officers' Training Corps from such corps and from the necessity of completing the course of military training as a prerequisite to graduation. [39 Stat. L. 191, as amended by 40 Stat. L. —.]

This section was amended by the Army Appropriation Act of July 9, 1918, ch. 17, § 7. The amendment added the last proviso.

SEC. 43. [Reserve Officers' Training Corps — standard courses of training.] The Secretary of War is hereby authorized to prescribe standard courses of theoretical and practical military training for units of the Reserve Officers' Training Corps, and no unit of the senior division shall be organized or maintained at any educational institution the authorities of which fail or neglect to adopt into their curriculum the prescribed courses of military training for the senior division or to devote at least an average of three hours per week per academic year to such military training; and no unit of the junior division shall be organized or maintained at any educational institution the authorities of which fail or neglect to adopt into their curriculum the prescribed courses of military training for the junior division, or to devote at least an average of three hours per week per academic year to such military training. [39 Stat. L. 192.]

SEC. 44. [Reserve Officers' Training Corps — eligibility to membership.] Eligibility to membership in the Reserve Officers' Training Corps shall be limited to students of institutions in which units of such corps may be established who are citizens of the United States, who are not less than fourteen years of age, and whose bodily condition indicates that they are physically fit to perform military duty, or will be so upon arrival at military age. [39 Stat. L. 192.]

SEC. 45. [Detail of officers of army to educational institutions.] The President is hereby authorized to detail such numbers of officers of the Army, either active or retired, not above the grade of colonel, as may be necessary, for duty as professors and assistant professors of military science and tactics at institutions where one or more units of the Reserve Officers' Training Corps are maintained; but the total number of active

officers so detailed at educational institutions shall not exceed three hundred, and no active officer shall be so detailed who has not had five years' commissioned service in the Army. In time of peace retired officers shall not be detailed under the provisions of this section without their consent. Retired officers below the grade of lieutenant colonel so detailed shall receive the full pay and allowances of their grade, and retired officers above the grade of major so detailed shall receive the same pay and allowances as a retired major would receive under a like detail. No detail of officers on the active list of the Regular Army under the provisions of this section shall extend for more than four years. [39 Stat. L. 192.]

Suspension of this section pending present war.—The Act of April 17, 1918, ch. —, 40 Stat. L. —, § 1 (see *infra*, p. 1037), suspends this section for the period of the present war.

SEC. 46. [Detail of enlisted men at educational institutions.] The President is hereby authorized to detail for duty at institutions where one or more units of the Reserve Officers' Training Corps are maintained such number of enlisted men, either active or retired or of the Regular Army Reserve, as he may deem necessary, but the number of active noncommissioned officers so detailed shall not exceed five hundred, and all active noncommissioned officers so detailed shall be additional in their respective grades to those otherwise authorized for the Army. Retired enlisted men or members of the Regular Army Reserve shall not be detailed under the provisions of this section without their consent. While so detailed they shall receive active pay and allowances. [39 Stat. L. 192.]

Suspension of this section pending present war.—The Act of April 17, 1918, ch. —, 40 Stat. L. —, § 1 (see *infra*, p. 1037), suspends this section for the period of the present war.

SEC. 47. [Supplies furnished educational institution.] The Secretary of War, under such regulations as he may prescribe, is hereby authorized to issue to institutions at which one or more units of the Reserve Officers' Training Corps are maintained such public animals, arms, uniforms, equipment, and means of transportation as he may deem necessary, and to forage at the expense of the United States public animals so issued. He shall require from each institution to which property of the United States is issued a bond in the value of the property issued for the care and safe-keeping thereof, and for its return when required. [39 Stat. L. 192.]

SEC. 48. [Camps for instruction of Reserve Officers' Training Corps.] The Secretary of War is hereby authorized to maintain camps for the further practical instruction of the members of the Reserve Officers' Training Corps, no such camps to be maintained for a period longer than six weeks in any one year, except in time of actual or threatened hostilities; to transport members of such corps to and from such camps at the expense of the United States so far as appropriations will permit; to subsist them at the expense of the United States while traveling to and from such camps and while remaining therein so far as appropriations will permit; to use the Regular Army, such other military forces as Congress from time to time authorizes, and such Government property as he may deem necessary for the military training of the members of such corps while in attendance at

such camps; to prescribe regulations for the government of such corps; and to authorize, in his discretion, the formation of company units thereof into battalion and regimental units. [39 Stat. L. 193.]

SEC. 49. [Officers' Reserve Corps — eligibility to membership.] The President alone, under such regulations as he may prescribe, is hereby authorized to appoint in the Officers' Reserve Corps any graduate of the senior division of the Reserve Officers' Training Corps who shall have satisfactorily completed the further training provided for in section fifty of this Act, or any graduate of the junior division who shall have satisfactorily completed the courses of military training prescribed for the senior division and the further training provided for in section fifty of this Act, and shall have participated in such practical instruction subsequent to graduation as the Secretary of War shall prescribe, who shall have arrived at the age of twenty-one years and who shall agree, under oath in writing, to serve the United States in the capacity of a reserve officer of the Army during a period of at least ten years from the date of his appointment as such reserve officer, unless sooner discharged by proper authority; but the total number of reserve officers so appointed shall not exceed fifty thousand: *Provided*, That any graduate qualified under the provisions of this section undergoing a postgraduate course at any institution shall not be eligible for appointment as a reserve officer while undergoing such postgraduate course, but his ultimate eligibility upon completion of such postgraduate course for such appointment shall not be affected because of his having undergone such postgraduate course. [39 Stat. L. 193.]

SEC. 50. [Reserve Officers' Training Corps — commutation of subsistence.] When any member of the senior division of the Reserve Officers' Training Corps has completed two academic years of service in that division, and has been selected for further training by the president of the institution and by its professor of military science and tactics, and has agreed in writing to continue in the Reserve Officers' Training Corps for the remainder of his course in the institution, devoting five hours per week to the military training prescribed by the Secretary of War, and has agreed in writing to pursue the courses in camp training prescribed by the Secretary of War, he may be furnished, at the expense of the United States, with commutation of subsistence at such rate, not exceeding the cost of the garrison ration prescribed for the Army, as may be fixed by the Secretary of War, during the remainder of his service in the Reserve Officers' Training Corps. [39 Stat. L. 193.]

This section is affected by a joint resolution of September 8, 1916, ch. 478, 39 Stat. L. 853, which provided as follows:

"That in the interpretation and execution of section fifty of the Act of Congress approved June third, nineteen hundred and sixteen, credit shall be given as for service in the senior division of the Reserve Officers' Training Corps to any member of that division for any period or periods of time during which such member has received or shall have received at an educational institution under the direction of an officer of the Army, detailed as professor of military science and tactics, a course of military training substantially equivalent to that prescribed by regulations under this section for the corresponding period or periods of training of the senior division, Reserve Officers' Training Corps."

SEC. 51. [**Officers' Reserve Corps — eligibility to membership.**] Any physically fit male citizen of the United States, between the ages of twenty-one and twenty-seven years, who shall have graduated prior to July first, nineteen hundred and nineteen, from any educational institution at which an officer of the Army was detailed as professor of military science and tactics, and who, while a student at such institution, completed courses of military training under the direction of such professor of military science and tactics substantially equivalent to those prescribed pursuant to this Act for the senior division, shall, after satisfactorily completing such additional practical military training as the Secretary of War shall prescribe, be eligible for appointment to the Officers' Reserve Corps and as a temporary additional second lieutenant in accordance with the terms of this Act. [39 Stat. L. 193, as amended by 40 Stat. L. —.]

This section was amended by the Army Appropriation Act of July 9, 1918, ch. 17, § 8. The amendment substituted "July first, nineteen hundred and nineteen" for "the date of this act."

SEC. 52. [**Regular army — officers — reserve officers as.**] The President alone is hereby authorized to appoint and commission as a temporary second lieutenant of the Regular Army in time of peace for purposes of instruction, for a period not exceeding six months, with the allowances now provided by law for that grade, but with pay at the rate of \$100 per month, any reserve officer appointed pursuant to sections forty-nine and fifty-one of this Act and to attach him to a unit of the Regular Army for duty and training during the period covered by his appointment as such temporary second lieutenant, and upon the expiration of such service with the Regular Army such officer shall revert to his status as a reserve officer. [39 Stat. L. 194.]

SEC. 53. [**Retirement, retired pay and pension — who entitled.**] No reserve officer or temporary second lieutenant appointed pursuant to this Act shall be entitled to retirement or to retired pay and shall be eligible for pension only for disability incurred in line of duty in active service or while serving with the Regular Army pursuant to the provisions of this Act: *Provided*, That in time of war the President may order reserve officers appointed under the provisions of this Act to active duty with any of the military forces of the United States in any grades not below that of second lieutenant, and while on such active duty they shall be subject to the Rules and Articles of War: *And provided further*, That the Adjutant General of the Army shall, under the direction and supervision of the Secretary of War, obtain, compile, and keep continually up to date all obtainable information as to the names, ages, addresses, occupations, and qualifications for appointment as commissioned officers of the Army, in time of war or other emergency, of men of suitable ages who, by reason of having received military training in civilian educational institutions or elsewhere, may be regarded as qualified and available for appointment as such commissioned officers. [39 Stat. L. 194.]

SEC. 54. [**Training camps.**] The Secretary of War is hereby authorized to maintain, upon military reservations or elsewhere, camps for the military instruction and training of such citizens as may be selected for such

instruction and training, upon their application and under such terms of enlistment and regulations as may be prescribed by the Secretary of War; to use, for the purpose of maintaining said camps and imparting military instruction and training thereat, such arms, ammunition, accouterments, equipments, tentage, field equipage, and transportation belonging to the United States as he may deem necessary; to furnish, at the expense of the United States, uniforms, subsistence, transportation by the most usual and direct route within such limits as to territory as the Secretary of War may prescribe, and medical supplies to persons receiving instruction at said camps during the period of their attendance thereat, to authorize such expenditures, from proper Army appropriations, as he may deem necessary for water, fuel, light, temporary structures, not including quarters for officers nor barracks for men, screening, and damages resulting from field exercises, and other expenses incidental to the maintenance of said camps, and the theoretical winter instruction in connection therewith; and to sell to persons receiving instruction at said camps, for cash and at cost price plus ten per centum, quartermaster and ordnance property, the amount of such property sold to any one person to be limited to that which is required for his proper equipment. All moneys arising from such sales shall remain available throughout the fiscal year following that in which the sales are made, for the purpose of that appropriation from which the property sold was authorized to be supplied at the time of the sale. The Secretary of War is authorized further to prescribe the courses of theoretical and practical instruction to be pursued by persons attending the camps authorized by this section; to fix the periods during which such camps shall be maintained; to prescribe rules and regulations for the government thereof; and to employ thereat officers and enlisted men of the Regular Army in such numbers and upon such duties as he may designate. [39 Stat. L. 194.]

This section is affected and amended in part by the Army Appropriation Act of May 12, 1917, ch. 12, 40 Stat. L. 70. The amendment relates to pay and allowances, and is set out *ante*, p. 458 cc.

SEC. 55. [The Enlisted Reserve Corps.] For the purpose of securing an additional reserve of enlisted men for military service with the Engineer, Signal, and Quartermaster Corps and the Ordnance and Medical Departments of the Regular Army, an Enlisted Reserve Corps, to consist of such number of enlisted men of such grade or grades as may be designated by the President from time to time, is hereby authorized, such authorization to be effective on and after the first day of July, nineteen hundred and sixteen.

There may be enlisted in the grade or grades hereinbefore specified, for a period of four years, under such rules as may be prescribed by the President, citizens of the United States, or persons who have declared their intentions to become citizens of the United States, subject to such physical, educational, and practical examination as may be prescribed in said rules. For men enlisting in said grade or grades certificates of enlistment in the Enlisted Reserve Corps shall be issued by the Adjutant General of the Army, but no such man shall be enlisted in said corps unless he shall be found physically, mentally, and morally qualified to hold such certificate and unless he shall be between the ages of eighteen and forty-five years. The certificates so given shall confer upon the holders when called into

active service or for purposes of instruction and training, and during the period of such active service, instruction, or training, all the authority, rights, and privileges of like grades of the Regular Army. Enlisted men of the Enlisted Reserve Corps shall take precedence in said corps according to the dates of their certificates of enlistment therein and when called into active service or when called out for purposes of instruction or training shall take precedence next below all other enlisted men of like grades in the Regular Army. And the Secretary of War is hereby authorized to issue to members of the Enlisted Reserve Corps and to persons who have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, distinctive rosettes or knots designed for wear with civilian clothing, and whenever a rosette or knot issued under the provisions of this section shall have been lost, destroyed, or rendered unfit for use without fault or neglect upon the part of the person to whom it is issued, the Secretary of War shall cause a new rosette or knot to be issued to such person without charge therefor. Any person who is not an enlisted man of the Enlisted Reserve Corps and shall not have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, and who shall wear such rosette or knot shall be guilty of misdemeanor punishable by a fine of not exceeding \$300, or imprisonment not exceeding six months, or both.

The President is authorized to assign members of the Enlisted Reserve Corps as reserves to particular organizations of the Regular Army, or to organize the Enlisted Reserve Corps, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe; and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps, herein provided for.

To the extent provided from time to time by appropriations the Secretary of War may order enlisted men of the Enlisted Reserve Corps to active service for purposes of instruction or training for periods not to exceed fifteen days in any one calendar year: *Provided*, That, with the consent of such enlisted men and within the limits of funds available for such purposes, such periods of active service may be extended for such number of enlisted men as may be deemed necessary.

Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service and from the date of their departure to place where ordered, transportation and reimbursement of cost of subsistence at such rate as may be fixed by the Secretary of War during travel from home to place where ordered and return home and subsistence in kind during period not in transit and while in service: *Provided*, That said enlisted men shall not be entitled to retirement or retirement pay: *Provided further*, That when any enlisted man of the Enlisted Reserve Corps shall be ordered to active service for purposes of instruction or training he may be paid at any time after the date such order shall become effective for the period from the date of leaving home to date of return thereto as determined in advance, both dates inclusive, and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same.

The uniform to be worn by enlisted men of the Enlisted Reserve Corps,

except corps insignia, shall be the same as prescribed for enlisted men of the Regular Army Reserve, and that in lieu of any money allowance for clothing there shall be issued to each enlisted man of the Enlisted Reserve Corps in time of peace such articles of clothing and equipment as the President may direct: *Provided*, That any clothing or other equipment issued to any enlisted man of the said corps shall remain the property of the United States, and in case of loss or destruction of any article, the article so lost or destroyed shall be replaced by issue to the enlisted man and the value thereof deducted from any pay due or to become due him, unless it shall be made to appear that such loss or destruction was not due to neglect or other fault on his part: *Provided further*, That any clothing or other equipment issued to enlisted men of the Enlisted Reserve Corps which shall have become unserviceable through ordinary wear and tear in the service of the United States shall be received back by the United States and serviceable like articles issued in lieu thereof: *Provided further*, That when enlisted men of the Enlisted Reserve Corps shall be discharged or otherwise separated from the service, all arms, equipage, clothing, and other property issued to them shall be accounted for under such regulations as may be prescribed by the Secretary of War.

Any enlisted man of the Enlisted Reserve Corps ordered to active service or for purposes of instruction or training shall, from the time he is required by the terms of the order to obey the same, be subject to the laws and regulations for the government of the Army of the United States.

The Secretary of War is hereby authorized to discharge any enlisted member of the Enlisted Reserve Corps when his services shall be no longer required, or when he shall have by misconduct unfitted himself for further service in the said corps: *Provided*, That any enlisted man of said corps who shall be ordered upon active duty as herein provided and who shall willfully fail to comply with the terms of the order so given him shall, in addition to any other penalty to which he may be subject, forfeit his certificate of enlistment.

In time of actual or threatened hostilities the President may order the Enlisted Reserve Corps, in such numbers and at such times as may be considered necessary, to active service with the Regular Army, and while on such service members of said corps shall exercise command appropriate to their several grades and rank in the organizations to which they shall be assigned and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of service as now allowed by law for the Regular Army: *Provided*, That upon a call by the President for a volunteer force the members of the Enlisted Reserve Corps may be mustered into the service of the United States as volunteers for duty with the Army in the grades held by them in the said corps, and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of service, as now provided by law for the Regular Army: *And provided further*, That enlisted men of the Enlisted Reserve Corps shall not acquire by virtue of issuance of certificates of enlistment to them a vested right to be mustered into the volunteer service of the United States. [39 Stat. L. 195, as amended by 40 Stat. L. —.]

This section was amended by the Army Appropriation Act of July 9, 1918, ch. 17, § 9. The amendment substituted the present fifth paragraph for the following:

"Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service, including the time required for actual travel from their homes to the places to which ordered and return to their homes: *Provided*, That said enlisted men shall not be entitled to retirement or retirement pay, nor shall they be entitled to pensions except for physical disability incurred in line of duty while in active service or while traveling under orders of competent authority to or from designated places of duty."

SEC. 56. [Military equipment and instructors at other schools and colleges.] Such arms, tentage, and equipment as the Secretary of War shall deem necessary for proper military training shall be supplied by the Government to schools and colleges, other than those provided for in section forty-seven of this Act, having a course of military training prescribed by the Secretary of War and having not less than one hundred physically fit male students above the age of fourteen years, under such rules and regulations as he may prescribe; and the Secretary of War is hereby authorized to detail such commissioned and noncommissioned officers of the Army to said schools and colleges, other than those provided for in section forty-five and forty-six of this Act, detailing not less than one such officer or non-commissioned officer to each five hundred students under military instruction. [39 Stat. L. 197.]

Suspension of this section pending present war.—The Act of April 17, 1918, ch. —, 40 Stat. L. —, § 1 (see *infra*, p. 1037), suspends this section for the present war.

SEC. 114. [Temporary vacancies in Regular Army due to details to the National Guard.] In time of war the temporary vacancies created in any grade not above that of colonel among the commissioned personnel of any arm, staff corps, or department of the Regular Army, through appointments of officers thereof to higher rank in organizations composed of members taken from the National Guard, shall be filled by temporary promotions according to seniority in rank from officers holding commissions in the next lower grade in said arm, staff corps, or department, and all vacancies created in any grade by such temporary promotions shall be in like manner filled from, and thus create temporary vacancies in, the next lower grade, and the vacancies that shall remain thereafter in said arm, staff corps, or department and that can not be filled by temporary promotions, as prescribed in this section, may be filled by the temporary appointment of officers of such number and grade or grades as shall maintain said arm, corps, or department at the full commissioned strength authorized by law: *Provided*, That in the staff corps and departments subject to the provisions of sections twenty-six and twenty-seven of the Act of February second, nineteen hundred and one, and Acts amendatory thereof, temporary vacancies that can not be filled by temporary promotions as hereinbefore prescribed shall be filled by temporary details in the manner prescribed in said sections twenty-six and twenty-seven, and Acts amendatory thereof, and the resulting temporary vacancies in the branches of the Army from which the details shall be so made shall be filled as hereinbefore in this section prescribed: *Provided further*, That officers temporarily promoted or appointed under the terms of this section shall be promoted or appointed by the President, by and with the advice and consent of the Senate, for terms that shall not extend beyond the war or the passing of the emergency for which additional forces were brought into the military

service of the United States, and at the termination of the war or the passing of the emergency said officers shall be discharged from the positions held by them under their temporary commissions or appointments, and officers detailed as herein authorized shall be relieved from their temporary details: *And provided further*, That officers temporarily promoted under the provisions of this section shall not vacate their permanent commissions nor be prejudiced in their relative or lineal standing in the Regular Army. [39 Stat. L. 211.]

For Act of Feb. 2, 1901, see 2 Fed. Stat. Ann. 948.

Sections 57 to 113 inclusive will be found under the title *MILITIA*, *ante*, p. 458a *et seq.*

SEC. 120. [Purchase or procurement of military supplies in time of actual or imminent war.] The President, in time of war or when war is imminent, is empowered, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation, or organized manufacturing industry.

Compliance with all such orders for products or material shall be obligatory on any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof and shall take precedence over all other orders and contracts theretofore placed with such individual, firm, company, association, corporation, or organized manufacturing industry, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any plant equipped for the manufacture of arms or ammunition, or parts of ammunition, or any necessary supplies or equipment for the Army, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any manufacturing plant, which, in the opinion of the Secretary of War shall be capable of being readily transformed into a plant for the manufacture of arms or ammunition, or parts thereof, or other necessary supplies or equipment, who shall refuse to give to the United States such preference in the matter of the execution of orders, or who shall refuse to manufacture the kind, quantity, or quality of arms or ammunition, or the parts thereof, or any necessary supplies or equipment, as ordered by the Secretary of War, or who shall refuse to furnish such arms, ammunitions, or parts of ammunition, or other supplies or equipment, at a reasonable price as determined by the Secretary of War, then, and in either such case, the President, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement herein provided for, is hereby authorized to take immediate possession of any such plant or plants, and through the Ordnance Department of the United States Army, to manufacture therein in time of war, or when war shall be imminent, such product or material as may be required, and any individual, firm, company, association, or corporation, or organized manufacturing industry, or the respon-

sible head or heads thereof, failing to comply with the provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding \$50,000.

The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just.

The Secretary of War shall also make, or cause to be made, a complete list of all privately owned plants in the United States equipped to manufacture arms or ammunition, or the component parts thereof. He shall obtain full and complete information regarding the kind of arms or ammunition, or the component parts thereof, manufactured or that can be manufactured by each such plant, the equipment in each plant, and the maximum capacity thereof. He shall also prepare, or cause to be prepared, a list of privately owned manufacturing plants in the United States capable of being readily transformed into ammunition factories, where the capacity of the plant is sufficient to warrant transforming such plant or plants into ammunition factories in time of war or when war shall be imminent; and as to all such plants the Secretary of War shall obtain full and complete information as to the equipment of each such plant, and he shall prepare comprehensive plans for transforming each such plant into an ammunition factory, or a factory in which to manufacture such parts of ammunition as in the opinion of the Secretary of War such plant is best adapted.

The President is hereby authorized, in his discretion, to appoint a Board on Mobilization of Industries Essential for Military Preparedness, non-partisan in character, and to take all necessary steps to provide for such clerical assistance as he may deem necessary to organize and coordinate the work hereinbefore described. [39 Stat. L. 213.]

Compliance with government orders excuses a manufacturer from performing a contract with another party to supply the same goods to the latter, where such compliance renders performance of the contract impossible. *Moore & Tierney v.*

Roxford Knitting Co., (S. D. N. Y. 1918)
250 Fed. 278, holding that under the facts of the case, the government did "place an order" within the meaning of this section.

SEC. 121. [Investigation as to Government manufacture of arms, and so forth.] The Secretary of War is hereby authorized to appoint a board of five citizens, two of whom shall be civilians and three of whom shall be officers of the Army, to investigate and report to him the feasibility, desirability, and practicability of the Government manufacturing arms, munitions, and equipment, showing in said report the comparative prices of the arms, munitions, and equipment manufactured in Government plants and those manufactured in private plants, the amount of money necessary to build and operate Government plants for the manufacture of arms, munitions, and equipment; showing also what the Government plants and arsenals are now doing in the way of manufacturing arms, munitions, and equipment, and what saving has accrued to the Government by reason of its having manufactured a large part of its own arms, munitions, and equipment for the last four years. And the Secretary of War is hereby directed to transmit said report to Congress on or before January first, nineteen hundred and seventeen. [39 Stat. L. 214.]

SEC. 122. [Investigation concerning medals of honor.] A board to consist of five general officers on the retired list of the Army shall be convened by the Secretary of War, within sixty days after the approval of this Act, for the purpose of investigating and reporting upon past awards or issues of the so-called congressional medal of honor by or through the War Department; this with a view to ascertain what medals of honor, if any, have been awarded or issued for any cause other than distinguished conduct by an officer or enlisted man in action involving actual conflict with an enemy by such officer or enlisted man or by troops with which he was serving at the time of such action. And in any case in which said board shall find and report that said medal was issued for any cause other than that hereinbefore specified the name of the recipient of the medal so issued shall be stricken permanently from the official medal or honor list. It shall be a misdemeanor for him to wear or publicly display said medal, and, if he shall still be in the Army, he shall be required to return said medal to the War Department for cancellation. Said board shall have full and free access to and use of all records pertaining to the award or issue of medals of honor by or through the War Department. The actual and necessary expenses of said board and its members shall be paid out of any appropriations available for contingent expenses of the Army of the War Department. [39 Stat. L. 214.]

SEC. 123. [Procurement of gauges, dies, jigs, and so forth, necessary for manufacture of arms, and so forth.] The Secretary of War be, and he is hereby, authorized to prepare or cause to be prepared, to purchase or otherwise procure, such gauges, dies, jigs, tools, fixtures, and other special aids and appliances, including specifications and detailed drawings, as may be necessary for the immediate manufacture, by the Government and by private manufacturers, of arms, ammunition, and special equipment necessary to arm and equip the land forces likely to be required by the United States in time of war: *Provided*, That in the expenditure of any sums appropriated to carry out the purposes of this section the existing laws prescribing competition in the procurement of supplies by purchase shall not govern, whenever in the opinion of the Secretary of War such action will be for the best interest of the public service. [39 Stat. L. 215.]

SEC. 124. [Nitrate supply.] The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also hereby authorized and empowered to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites, upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than

water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.

The President is authorized to lease, purchase, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants, and to take from any lands of the United States, or to purchase or acquire by condemnation materials, minerals, and processes, patented or otherwise, necessary for the construction and operation of such plants and for the manufacture of such products.

The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

The President is hereby authorized and empowered to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof.

The sum of \$20,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to enable the President of the United States to carry out the purposes herein provided for.

The plant or plants provided for under this Act shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital.

In order to raise the money appropriated by this Act and necessary to carry its provisions into effect, the Secretary of the Treasury, upon the request of the President of the United States, may issue and sell, or use for such purpose or construction hereinabove authorized, any of the bonds of the United States now available in the Treasury of the United States under the Act of August fifth, nineteen hundred and nine, the Act of February fourth, nineteen hundred and ten, and the Act of March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed \$20,000,000: *Provided*, That any Panama Canal bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion, may deem advisable, and fix, instead of fifty years after date of issue, as in said Act of August fifth, nineteen hundred and nine, not exceeding fifty years. [39 Stat. L. 215.]

For Act of Feb. 4, 1910, see 1912 Supp. Fed. Stat. Ann. 309.

SEC. 125. [Protection of the uniform.] It shall be unlawful for any person not an officer or enlisted man of the United States Army, Navy, or Marine Corps, to wear the duly prescribed uniform of the United States Army, Navy, or Marine Corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States Army, Navy, or Marine Corps: *Provided*, That the foregoing provision shall not be construed so as to pre-

vent officers or enlisted men of the National Guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the National Guard; nor to prevent members of the organization known as the Boy Scouts of America, or the Naval Militia, or such other organizations as the Secretary of War may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States Army, Navy, or Marine Corps, Regular or Volunteer, and whose most recent service was terminated by an honorable discharge, muster out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such Regular or Volunteer service; nor to prevent any person who has been honorably discharged from the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing his uniform from the place of his discharge to his home, within three months after the date of such discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers or enlisted men, or both, of the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by the members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of the duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States Army, Navy, or Marine Corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States Army, Navy, or Marine Corps in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States Army, Navy, or Marine Corps: *Provided further*, That the uniforms worn by the officers or enlisted men of the National Guard, or by the members of the military societies or the instructors and members of the cadet corps referred to in the preceding proviso shall include some distinctive mark or insignia to be prescribed by the Secretary of War to distinguish such uniforms from the uniforms of the United States Army, Navy, and Marine Corps: *And provided further*, That the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by officers of the United States Army, Navy, or Marine Corps, or any insignia of rank similar thereto.

Any person who offends against the provision of this section shall, on conviction, be punished by a fine not exceeding \$300, or by imprisonment not exceeding six months, or by both such fine and imprisonment: *Provided*, That hereafter, upon the discharge or furlough to the Reserve of an enlisted man, all uniform outer clothing then in his possession, except such articles as he may be permitted to wear from the place of termination of his active service to his home, as authorized by this section, will be retained for military use; and within four months after such termination of his active service he shall return all uniform clothing, which he was so permitted to retain for wear to his home, by mail, under a franked label which shall be furnished him for the purpose, and in conformity with the instructions given him at the time of such termination of his active service; and in case he shall fail to return the same within such period, and in accordance with such instructions, he shall be deemed guilty of a misdemeanor, and, upon conviction, suffer the punishment prescribed by this section: *Provided further*, That upon the release from Federal service of an enlisted man of the National Guard called as such into the service of the United States, all uniform outer clothing then in his possession shall be taken up and accounted for as property issued to the National Guard of the State to which the enlisted man belongs, in the manner prescribed by section sixty-seven of said Act: *And provided further*, That when an enlisted man is discharged otherwise than honorably, all uniform outer clothing in his possession shall be retained for military use, and, when authorized by regulations prescribed by the Secretary of War, a suit of citizen's outer clothing to cost not exceeding \$15 may be issued to such enlisted man: *And provided further*, That officers and members of the National Home for Disabled Volunteer Soldiers may, regardless of the preceding provisions of said Act, wear such uniforms as the Secretary of War may authorize. [39 Stat. L. 216, as amended by 40 Stat. L. —.]

This section was amended by the Army Appropriation Act of July 9, 1918, ch. 17, § 10. The amendment consisted in adding the four provisos to the last paragraph.

SEC. 126. [Mileage — enlisted men — transportation.] On and after July first, nineteen hundred and sixteen, an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive 3½ cents per mile from the place of his discharge to the place of his acceptance for enlistment, enrollment, or original muster into the service, at his option: *Provided*, That for sea travel on discharge transportation and subsistence only shall be furnished to enlisted men. [39 Stat. L. 217.]

SEC. 127. [Officer of regular army — discharge — deprivation of commission.] Nothing in this Act shall be held or construed so as to discharge any officer from the Regular Army or to deprive him of the commission which he now holds therein. [39 Stat. L. 217.]

SEC. 128. [Repeal of inconsistent laws.] All laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed. [39 Stat. L. 217.]

[SEC. 1.] * * * [Chief of Coast Artillery — rank, pay, and allowances.] That hereafter the Chief of Coast Artillery shall have the rank, pay, and allowances of a major general. [39 Stat. L. 349.]

This is from the Fortifications Appropriation Act of July 6, 1916, ch. 225.

An Act Making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of Aug. 29, 1916, ch. 418, 39 Stat. L. 622.]

[SEC. 1.] * * * [Signal Corps — settlement of transactions — payment by whom.] That hereafter in the settlement of transactions between appropriations under the Signal Corps, or between the Signal Corps and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer of the Signal Corps, or of the office, bureau, or department concerned. [39 Stat. L. 622.]

* * * [Signal Corps — contracts — form.] That hereafter whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Chief Signal Officer, or by officers of the Signal Corps authorized to make them, and are in excess of \$500 in amount, such contracts shall be reduced to writing and signed by the contracting parties. In all other cases contracts shall be entered into under such regulations as may be prescribed by the Chief Signal Officer. [39 Stat. L. 622.]

* * * [Detached officers — assignments — retired officers — rank.] That in applying section twenty-five of the national defense Act approved June third, nineteen hundred and sixteen, the President shall assign to officers of the Army such constructive dates of original commission, from which lengths of commissioned service shall be computed, as will preserve their rights to promotion in accordance with their relative order on the lineal lists of their arms and continue in effect losses of files occasioned by sentences of courts-martial or failures to pass required examinations for promotion, said constructive dates of original commission to be subject to change whenever a change thereof may be necessary in order to carry into effect losses of files hereafter incurred by any officer through a sentence of court-martial or a failure to pass a required examination for promotion: *Provided further*, That in determining the arm from which a detail is to be made to a vacancy in the detached officers' list, as provided in the third proviso of section twenty-five of the national defense Act approved June third, nineteen hundred and sixteen, the officer of any grade who is the senior in that grade according to the constructive dates of original commission provided for in the preceding proviso shall be considered the senior in length of commissioned service of all officers of that grade: *Provided further*, That in determining the rights of officers in the last proviso of

section twenty-four of said national defense Act, officers retired before the separation of the Field Artillery from the Coast Artillery shall be regarded as having belonged to the Field Artillery: *Provided further*, That when by reason of increase in the arm, corps, or branch of the service in which an officer is commissioned his loss of files in lineal rank due to suspension from promotion on account of failure to pass the required examination therefor exceeds the loss he would have sustained if no such increase had occurred, he shall, if promoted upon reexamination, be advanced to the position he would have occupied in the grade to which promoted had no increase occurred: *And provided further*, That the general officers of the line who were appointed as such pursuant to the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page eleven hundred and ninety-one), shall take rank in their present grades over all officers hereafter appointed to like grade. [39 Stat. L. 623.]

For Act of June 3, 1916, see *supra*, p. 921.

For Act of March 4, 1915, ch. 143, see 1916 Supp. Fed. Stat. Ann. 302.

*** * * [Recruit depots — enlisted men detached for duty — rank, etc.]**

That hereafter one of the enlisted men detached from the Army at large for duty at each of the recruit depots under the provisions of the Act of June twelfth, nineteen hundred and six, shall, while so detached, have the rank, pay, and allowances of a regimental sergeant major. [39 Stat. L. 624.]

For Act of June 12, 1906, ch. 3078, see 1909 Supp. Fed. Stat. Ann. 681.

*** * * [Government employees in military service — restoration to former position.]** That all officers and enlisted men of the National Guard and of the Medical Reserve Corps of the Army who are Government employees and who respond to the call of the President for service shall, at the expiration of the military service to which they are called, be restored to the positions occupied by them at the time of the call: *Provided further*, That nothing in this Act or previous Acts of Congress shall be construed to prohibit the paying of men enlisted by State authorities of any State for militia organization for the purpose of bringing said organization up to the minimum necessary to permit of the muster in of said organization, from the date of such enlistments to the date of muster in or from date of enlistment to date of rejection, after physical examination. [39 Stat. L. 624.]

*** * * [Privates — first class — signal corps — Medical Department.]** That hereafter the proportion of privates first class to privates in the Signal Corps and in the Medical Department shall be the same as the proportion of privates first class to privates now authorized by law in the Quartermaster Corps. [39 Stat. L. 625.]

*** * * [Headquarters clerks, etc.— Quartermaster corps — pay and allowances — assignments.]** Hereafter headquarters clerks shall be known as Army field clerks and shall receive pay at the rates herein provided, and after twelve years of service, at least three years of which shall have been

on detached duty away from permanent station, or on duty beyond the continental limits of the United States, or both, shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war.

Hereafter not to exceed two hundred clerks, Quartermaster Corps, who shall have had twelve years of service, at least three years of which shall have been on detached duty away from permanent station, or on duty beyond the continental limits of the United States, or both, shall be known as field clerks, Quartermaster Corps, and shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war. * * *

That said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau in the War Department. [39 Stat. L. 625.]

* * * [Bonds of disbursing clerks — waiver — officers of Quartermaster Corps.] That hereafter the provisions of section eleven hundred and ninety-one of the Revised Statutes of the United States may, in the discretion of the Secretary of War, be waived in the cases of officers of the Quartermaster Corps who are not accountable for public funds or public property. [39 Stat. L. 626.]

For R. S. sec. 1191, see 7 Fed. Stat. Ann. 990.

* * * [Medical Department — superintendent — allowances, etc., during illness.] That hereafter the superintendent shall receive such allowances of quarters, subsistence, and medical care during illness as may be prescribed in regulations by the Secretary of War. [39 Stat. L. 626.]

* * * [Retired officers — assignment to vacant army post — pay and allowances.] That when by reason of the movement of troops a post is temporarily left without its regular garrison and with no commissioned officer except of the Medical Reserve Corps on duty thereat, the Secretary of War may assign a retired officer of the Army, with his consent, to active duty in charge of such post. The officer so assigned shall perform the duties of commanding officer and also any necessary staff duties at such post, and shall, while in the performance of such duties, receive the full pay and allowances of his grade, subject to the limitations imposed by the Act of March second, nineteen hundred and five, and the Act of June twelfth, nineteen hundred and six, which limitations shall include the grades of brigadier general, major general, and lieutenant general. [39 Stat. L. 627.]

For Act of March 2, 1905, ch. 975, see 10 Fed. Stat. Ann. 429, 430.

For Act of June 12, 1906, ch. 3078, see 1909 Supp. Fed. Stat. Ann. 681.

* * * [Officers on retired list — promotion.] That the President be, and he is hereby, authorized to appoint any colonel of the Army on the retired list who before retirement served more than forty-five years and

six months, including sixteen years in the line of the Army, who held command in the line or staff over nine and a half years, who received campaign badges for service in four Indian campaigns and in the War with Spain and the Philippine insurrection, and who was recommended by the commanding general in time of war or insurrection for appointment to the grade of general officer in the Volunteer Army, to the grade of brigadier general on the retired list: *Provided*, That such officer did not receive advanced grade upon retirement nor has since received any advance over the grade held at the date of retirement.

That the President be, and he is hereby, authorized to appoint to the grade of major general on the retired list of the Army any brigadier general now borne on said list who served with credit in the Army throughout both the Civil War and the War with Spain, as well as during the interval between said wars, and who, being a general officer, exercised with efficiency and gallantry the command of a brigade or of a higher unit in action or in actual operations against an enemy, and who in consideration of services so rendered was recommended to be a major general, United States Volunteers, by the commanding general of the Army, as shown by the records of the War Department: *Provided*, That any brigadier general on the retired list who as senior colonel commanded with credit a brigade or higher unit in the Civil War, though not so recommended, may be advanced in grade as authorized by this paragraph if he fulfills the other requirements thereof.

That the President be, and he is hereby, authorized to appoint and place on the retired list of the Army with the rank of major general, any officer on the retired list who served not less than one year in the Regular or Volunteer forces of the United States during the Civil War prior to April ninth, eighteen hundred and sixty-five, and who was honorably discharged therefrom, who has since served not less than forty years as a commissioned officer of the Regular Army, and who was the last Civil War veteran on the active list of the Army for over two years before retirement and had ranked every general officer on the active list in length of service when he retired. [39 Stat. L. 627.]

* * * [Officers on retired list for disability — examination — assignment to duty.] That the Secretary of War shall make a list of all officers of the Army who have been placed on the retired list for disability and shall cause such officers to be examined at intervals as may be advisable, and such officers as shall be found to have recovered from such disabilities or to be able to perform service of value to the Government sufficient to warrant such action shall be assigned to such duty as the Secretary of War may approve. [39 Stat. L. 629.]

* * * [Subsistence supplies — price to officers and enlisted men.] That hereafter the officers and enlisted men of the Navy and the Marine Corps shall be permitted to purchase subsistence supplies at the same price as is charged the officers and the enlisted men of the Army; and the officers and the enlisted men of the Army shall be permitted to purchase subsistence supplies from the Navy and Marine Corps at the same price as is charged the officers and the enlisted men of the Navy and Marine Corps. [39 Stat. L. 630.]

* * * **[Disciplinary barracks guard — extra-duty pay.]** That hereafter the extra-duty pay to the United States disciplinary barracks guard shall be at the following rates per day: Sergeants, 35 cents; corporals, 30 cents; and privates, 20 cents; * * *. [39 Stat. L. 632.]

* * * **[Enlisted men — discharge — allowances for transportation — men on Mexican border.]** That hereafter when an enlisted man having ten or more years' service in the Army is discharged on account of disability incurred in the line of duty, transportation of his authorized change of station allowance of baggage from his last duty station to his home in addition to other travel allowances fixed by law may be authorized by the Secretary of War: *Provided further*, That when members of the National Guard, who have been mustered into the service of the United States, have been discharged under the order of the War Department which provides that members of the National Guard with dependent families may be mustered out, transportation from their position on the Mexican border to their homes may be authorized by the Secretary of War; of persons on their discharge from the United States disciplinary barracks or from any place in which they have been held under a sentence of dishonorable discharge and confinement for more than six months, or from the Government Hospital for the Insane after transfer thereto from such barracks or place, to their homes (or elsewhere as they may elect), provided the cost in each case shall not be greater than to the place of last enlistment; * * *. [39 Stat. L. 633.]

* * * **[Clothing and camp and garrison equipage — proceeds from sale — exchange.]** That hereafter the proceeds derived from the sale of surplus cuttings of material for clothing manufactured by the Quartermaster Corps of the Army shall be deposited to the credit of that appropriation out of which the material was purchased: *Provided further*, That hereafter sewing machines and other labor-saving machinery used in the manufacture of clothing and equipage, motor trucks and passenger trucks and passenger-carrying vehicles, and band instruments, may be exchanged in part payment for new machines, vehicles, and instruments used for the same purpose as those proposed to be exchanged. [39 Stat. L. 635.]

* * * **[Army supplies — accounting.]** That hereafter the accounting for Army supplies or property and the fixing of responsibility therefor shall be according to such regulations as may be prescribed by the Secretary of War. [39 Stat. L. 635.]

* * * **[Quartermaster Corps — civilian employees — number — salary.]** That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [39 Stat. L. 636.]

* * * **[Motor ambulances — selection and purchase — advertisements]** That the Secretary of War may in his discretion select types and

makes of motor ambulances for the Army and authorize their purchase without regard to the laws prescribing advertisement for proposals for supplies and material for the Army. [39 Stat. L. 639.]

* * * **[Medical Department — contracts — form.]** That hereafter whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Surgeon General or by officers of the Medical Department authorized to make them, and are in excess of \$500 in amount, such contracts shall be reduced to writing and signed by the contracting parties, but in all other cases contracts shall be prepared under such regulations as may be prescribed by the Surgeon General. [39 Stat. L. 639.]

[Medical Department — first lieutenant — age limit.]

A provision relating to first lieutenants in the Medical Department of the Army and affecting the Act of June 3, 1916, ch. 134, § 10, 39 Stat. L. 171, will be found in a note to that section, *supra*, p. 927.

* * * **[Rifle clubs and schools — supplies furnished for target practice.]** The Secretary of War is hereby authorized to issue, under such rules and regulations as he may prescribe, for use in target practice, targets, target materials, and other necessary accessories, to rifle clubs organized under the rules of the National Board for the Promotion of Rifle Practice and to schools having a uniformed corps of cadets and carrying on military training, in sufficient number for the proper conduct of target practice. [39 Stat. L. 643.]

* * * **[Cuba — supplies furnished for equipment of troops.]** The Secretary of War is hereby authorized to sell, at the prices fixed and published by the Chief of Ordnance, to the Government of Cuba such articles and quantities of ordnance and ordnance stores as may be desired by that Government for the equipment of its troops and as may be approved by the President of, the United States. [39 Stat. L. 643.]

* * * **[Transportation of troops in time of war — taking over facilities.]** The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable. [39 Stat. L. 645.]

SEC. 2. **[Council of National Defense — establishment — advisory commission — duty of Council — rules and regulations — appropriation — reports.]** That a Council of National Defense is hereby established, for the coordination of industries and resources for the national security and welfare, to consist of the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

That the Council of National Defense shall nominate to the President, and the President shall appoint, an advisory commission, consisting of not

more than seven persons, each of whom shall have special knowledge of some industry, public utility, or the development of some natural resource, or be otherwise specially qualified, in the opinion of the council, for the performance of the duties hereinafter provided. The members of the advisory commission shall serve without compensation, but shall be allowed actual expenses of travel and subsistence when attending meetings of the commission or engaged in investigations pertaining to its activities. The advisory commission shall hold such meetings as shall be called by the council or be provided by the rules and regulations adopted by the council for the conduct of its work.

That it shall be the duty of the Council of National Defense to supervise and direct investigations and make recommendations to the President and the heads of executive departments as to the location of railroads with reference to the frontier of the United States so as to render possible expeditious concentration of troops and supplies to points of defense; the coordination of military, industrial, and commercial purposes in the location of extensive highways and branch lines of railroad; the utilization of waterways; the mobilization of military and naval resources for defense; the increase of domestic production of articles and materials essential to the support of armies and of the people during the interruption of foreign commerce; the development of seagoing transportation; data as to amounts, location, method and means of production, and availability of military supplies; the giving of information to producers and manufacturers as to the class of supplies needed by the military and other services of the Government, the requirements relating thereto, and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the Nation.

That the Council of National Defense shall adopt rules and regulations for the conduct of its work, which rules and regulations shall be subject to the approval of the President, and shall provide for the work of the advisory commission to the end that the special knowledge of such commission may be developed by suitable investigation, research, and inquiry and made available in conference and report for the use of the council; and the council may organize subordinate bodies for its assistance in special investigations, either by the employment of experts or by the creation of committees of specially qualified persons to serve without compensation, but to direct the investigations of experts so employed.

That the sum of \$200,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available for experimental work and investigations undertaken by the council, by the advisory commission, or subordinate bodies, for the employment of a director, expert and clerical expenses and supplies, and for the necessary expenses of members of the advisory commission or subordinate bodies going to and attending meetings of the commission or subordinate bodies. Reports shall be submitted by all subordinate bodies and by the advisory commission to the council, and from time to time the council shall report to the President or to the heads of executive departments upon special inquiries or subjects appropriate thereto, and an annual report to the Congress shall be submitted through the President, including as full a statement of the activities of

the council and the agencies subordinate to it as is consistent with the public interest, including an itemized account of the expenditures made by the council or authorized by it, in as full detail as the public interest will permit: *Provided, however,* That when deemed proper the President may authorize in amounts stipulated by him unvouchered expenditures and report the gross sums so authorized not itemized. [39 Stat. L. 649.]

SEC. 3. [Amendment of Articles of War.] That section thirteen hundred and forty-two of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

“Sec. 1242. The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States. [39 Stat. L. 650.]

For R. S. sec. 1342, see 1 Fed. Stat. Ann. 480.

“ I. PRELIMINARY PROVISIONS.

“ARTICLE 1. DEFINITIONS.—The following words when used in these articles shall be construed in the sense indicated in this Article, unless the context shows that a different sense is intended, namely:

“(a) The word ‘officer’ shall be construed to refer to a commissioned officer;

“(b) The word ‘soldier’ shall be construed as including a non[com]-missioned officer, a private, or any other enlisted man;

“(c) The word ‘company’ shall be understood as including a troop or battery; and

“(d) The word ‘battalion’ shall be understood as including a squadron.

“ART. 2. PERSONS SUBJECT TO MILITARY LAW.—The following persons are subject to these articles and shall be understood as included in the term ‘any person subject to military law,’ or ‘persons subject to military law,’ whenever used in these articles: *Provided,* That nothing contained in this Act, except as specifically provided in Article two, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction, unless otherwise specifically provided by law.

“(a) All officers and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

“(b) Cadets;

“(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided,* That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

“(d) All retainers to the camp and all persons accompanying or serving

with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

“(e) All persons under sentence adjudged by courts-martial;

“(f) All persons admitted into the Regular Army Soldiers’ Home at Washington, District of Columbia. [39 Stat. L. 650.]

“Persons accompanying or serving with the armies” (the phrase in clause “(d)”), was held to apply to a person on an army transport who volunteered to

stand watch, and for several days did so, and finally refused to continue. *Ex p. Gerlach*, (S. D. N. Y. 1917) 247 Fed. 616.

“II. COURTS-MARTIAL.

“ART. 3. COURTS-MARTIAL CLASSIFIED.— Courts-martial shall be of three kinds, namely:

“First, general courts-martial;

“Second, special courts-martial; and

“Third, summary courts-martial. [39 Stat. L. 651.]

“A. COMPOSITION.

“ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.— All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial. [39 Stat. L. 651.]

“ART. 5. GENERAL COURTS-MARTIAL.— General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service. [39 Stat. L. 651.]

“ART. 6. SPECIAL COURTS-MARTIAL.— Special courts-martial may consist of any number of officers from three to five, inclusive. [39 Stat. L. 651.]

“ART. 7. SUMMARY COURTS-MARTIAL.— A summary court-martial shall consist of one officer. [39 Stat. L. 651.]

“B. BY WHOM APPOINTED.

“ART. 8. GENERAL COURTS-MARTIAL.— The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution. [39 Stat. L. 652.]

“ART. 9. SPECIAL COURTS-MARTIAL.— The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution. [39 Stat. L. 652.]

“ART. 10. SUMMARY COURTS-MARTIAL.— The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him. [39 Stat. L. 652.]

“ART. 11. APPOINTMENT OF JUDGE ADVOCATES.— For each general or special court-martial the authority appointing the court shall appoint a judge advocate, and for each general court-martial one or more assistant judge advocates when necessary. [39 Stat. L. 652.]

“ C. JURISDICTION:

“ART. 12. GENERAL COURTS-MARTIAL.— General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles and any other person who by the law of war is subject to trial by military tribunals: *Provided*, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy. [39 Stat. L. 652.]

“ART. 13. SPECIAL COURTS-MARTIAL.— Special courts-martial shall have power to try any person subject to military law, except an officer, for any crime or offense not capital made punishable by these articles: *Provided*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

“Special courts-martial shall not have power to adjudge dishonorable discharge, nor confinement in excess of six months, nor to adjudge forfeiture of more than six months' pay. [39 Stat. L. 652.]

“ART. 14. SUMMARY COURTS-MARTIAL.— Summary courts-martial shall have power to try any person subject to military law, except an officer, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general

court-martial: *Provided, further*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

“Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months’ pay: *Provided*, That when the summary court officer is also the commanding officer no sentence of such summary court-martial adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority. [39 Stat. L. 652.]

“ART. 15. NOT EXCLUSIVE.—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by the law of war may be lawfully triable by such military commissions, provost courts, or other military tribunals. [39 Stat. L. 653.]

“ART. 16. OFFICERS; HOW TRIABLE.—Officers shall be triable only by general courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank. [39 Stat. L. 653.]

“D. PROCEDURE.

“ART. 17. JUDGE ADVOCATE TO PROSECUTE.—The judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented before the court by counsel of his own selection for his defense, if such counsel be reasonably available, but should he, for any reason, be unrepresented by counsel, the judge advocate shall from time to time throughout the proceedings advise the accused of his legal rights. [39 Stat. L. 653.]

“ART. 18. CHALLENGES.—Members of a general or special court-martial may be challenged by the accused, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. [39 Stat. L. 653.]

“ART. 19. OATHS.—The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: ‘You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or discover the vote or opinion

of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.'

"When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge advocate and to each assistant judge advocate, if any, an oath or affirmation in the following form: 'You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God.'

"All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: 'You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.'

"Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: 'You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God.'

"Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: 'You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God.'

"In case of affirmation the closing sentence of adjuration will be omitted. [39 Stat. L. 653.]

"ART. 20. CONTINUANCES.—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just. [39 Stat. L. 654.]

"ART. 21. REFUSAL TO PLEAD.—When the accused, arraigned before a court-martial, from obstinacy and deliberate design stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if he had pleaded not guilty. [39 Stat. L. 654.]

"ART. 22. PROCESS TO OBTAIN WITNESSES.—Every judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions. [39 Stat. L. 654.]

"ART. 23. REFUSAL TO APPEAR OR TESTIFY.—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the Territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it

shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses. [39 Stat. L. 654.]

“ART. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him. [39 Stat. L. 654.]

“ART. 25. DEPOSITIONS — WHEN ADMISSIBLE.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: *Provided*, That testimony by deposition may be adduced for the defense in capital cases. [39 Stat. L. 655.]

“ART. 26. DEPOSITIONS — BEFORE WHOM TAKEN.—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths. [39 Stat. L. 655.]

“ART. 27. COURTS OF INQUIRY — RECORDS OF, WHEN ADMISSIBLE.—The record of the proceedings of a court of inquiry may be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer. [39 Stat. L. 655.]

“ART. 28. RESIGNATION WITHOUT ACCEPTANCE DOES NOT RELEASE OFFICER.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter. [39 Stat. L. 655.]

“ART. 29. ENLISTMENT WITHOUT DISCHARGE.— Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and, where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein. [39 Stat. L. 655.]

“ART. 30. CLOSED SESSIONS.— Whenever a general or special court-martial shall sit in closed session, the judge advocate and the assistant judge advocate, if any, shall withdraw; and when their legal advice or their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel if there be any. [39 Stat. L. 655.]

“ART. 31. ORDER OF VOTING.— Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank. [39 Stat. L. 655.]

“ART. 32. CONTEMPTS.— A court-martial may punish at discretion, subject to the limitations contained in Article fourteen, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. [39 Stat. L. 655.]

“ART. 33. RECORDS — GENERAL COURTS-MARTIAL.— Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the judge advocate; but in case the record can not be authenticated by the judge advocate, by reason of his death, disability, or absence, it shall be signed by the president and an assistant judge advocate, if any; and if there be no assistant judge advocate, or in case of his death, disability, or absence, then by the president and one other member of the court. [39 Stat. L. 655.]

“ART. 34. RECORDS — SPECIAL AND SUMMARY COURTS-MARTIAL.— Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the president may from time to time prescribe. [39 Stat. L. 656.]

“ART. 35. DISPOSITION OF RECORDS — GENERAL COURTS-MARTIAL.— The judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been finally acted upon, be transmitted to the Judge Advocate General of the Army. [39 Stat. L. 656.]

“ART. 36. DISPOSITION OF RECORDS — SPECIAL AND SUMMARY COURTS-MARTIAL.— After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President

may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of special and summary courts-martial may be destroyed. [39 Stat. L. 656.]

“ART. 37. IRREGULARITIES — EFFECT OF.— The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided*, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: *Provided further*, That the omission of the words ‘hard labor’ in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments. [39 Stat. L. 656.]

“ART. 38. PRESIDENT MAY PRESCRIBE RULES.— The President may by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals: *Provided*, That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further*, That all rules made in pursuance of this article shall be laid before the Congress annually. [39 Stat. L. 656.]

“ E. LIMITATIONS UPON PROSECUTIONS.

“ART. 39. AS TO TIME.— Except for desertion committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment by court-martial shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the afore-said periods of limitation: *And provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law. [39 Stat. L. 656.]

“ART. 40. AS TO NUMBER.— No person shall be tried a second time for the same offense. [39 Stat. L. 657.]

“ F. PUNISHMENTS.

“ART. 41. CERTAIN KINDS PROHIBITED.— Punishment by flogging or by branding, marking, or tattooing on the body is prohibited. [39 Stat. L. 657.]

"ART. 42. PLACES OF CONFINEMENT — WHEN LAWFUL.— Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall under the sentence of a court-martial be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature by some statute of the United States, or at the common law as the same exists in the District of Columbia, or by way of commutation of a death sentence, and unless, also, the period of confinement authorized and adjudged by such court-martial is one year or more: *Provided*, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: *Provided further*, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: *Provided further*, That persons sentenced to dishonorable discharge and to confinement not in a penitentiary, shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of War or the reviewing authority may direct, but not in a penitentiary. [39 Stat. L. 657.]

"ART. 43. DEATH SENTENCE — WHEN LAWFUL.— No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death, except by the concurrence of two-thirds of the members of said court-martial and for an offense in these articles expressly made punishable by death. All other convictions and sentences, whether by general or special court-martial, may be determined by a majority of the members present. [39 Stat. L. 657.]

"ART. 44. COWARDICE; FRAUD — ACCESSORY PENALTY.— When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him. [39 Stat. L. 657.]

"ART. 45. MAXIMUM LIMITS.— Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not, in time of peace, exceed such limit or limits as the President may from time to time prescribe. [39 Stat. L. 657.]

"G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY.

"ART. 46. APPROVAL AND EXECUTION OF SENTENCE.— No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being. [39 Stat. L. 657.]

"ART. 47. POWERS INCIDENT TO POWER TO APPROVE.— The power to approve the sentence of a court-martial shall be held to include:

"(a) The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding

of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and

“(b) The power to approve or disapprove the whole or any part of the sentence. [39 Stat. L. 657.]

“ART. 48. CONFIRMATION — WHEN REQUIRED.— In addition to the approval required by article forty-six, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:

“(a) Any sentence respecting a general officer:

“(b) Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division;

“(c) Any sentence extending to the suspension or dismissal of a cadet; and

“(d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the Territorial department or division.

“When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary. [39 Stat. L. 658.]

“ART. 49. POWERS INCIDENT TO POWER TO CONFIRM.— The power to confirm the sentence of a court-martial shall be held to include:

“(a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt; and

“(b) The power to confirm or disapprove the whole or any part of the sentence. [39 Stat. L. 658.]

“ART. 50. MITIGATION OR REMISSION OF SENTENCES.— The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence, but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

“Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

“ The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial. [39 Stat. L. 658.]

“ART. 51. SUSPENSION OF SENTENCES OF DISMISSAL OR DEATH.— The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President. [39 Stat. L. 658.]

“ART. 52. SUSPENSION OF SENTENCES.— The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, suspend the execution, in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted. The death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence. [39 Stat. L. 659, as amended by 40 Stat. L. —.]

This section was amended to read as here given by the Act of July 9, 1918, ch. 10. The section formerly read as follows:

“ART. 52. SUSPENSION OF SENTENCE OF DISHONORABLE DISCHARGE.— The authority competent to order the execution of a sentence, including dishonorable discharge, may suspend the execution of the dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the soldier is held or by the Secretary of War.”

“ ART. 53. EXECUTION OR REMISSION — CONFINEMENT IN DISCIPLINARY BARRACKS.— When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War.” [39 Stat. L. 659, as amended by 40 Stat. L. —.]

This section was amended to read as above by the Act of July 9, 1918, ch. 10. The section formerly read as follows:

“ART. 53. SUSPENSION OF SENTENCES OF FORFEITURE OR CONFINEMENT.— The authority competent to order the execution of a sentence adjudged by a court-martial may, if the sentence involve neither dismissal nor dishonorable discharge, suspend the execution of the sentence in so far as it relates to the forfeiture of pay or to confinement, or to both; and the person under sentence may be restored to duty during the suspension of confinement. At any time within one year after the date of the order of suspension such order may, for sufficient cause, be vacated and the execution of the sentence directed by the military authority competent to order the execution of like sentences in the command, exclusive of penitentiaries and the United States Disciplinary Barracks, to which the person under sentence belongs or in which he may be found; but if the order of suspension be not vacated within one year after the date thereof the suspended sentence shall be held to have been remitted.”

“ III. PUNITIVE ARTICLES.

“ A. ENLISTMENT; MUSTER; RETURNS.

“ART. 54. FRAUDULENT ENLISTMENT.—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct. [39 Stat. L. 659.]

“ART. 55. OFFICER MAKING UNLAWFUL ENLISTMENT.—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct. [39 Stat. L. 659.]

“ART. 56. MUSTER ROLLS — FALSE MUSTER.—At every muster of a regiment, troop, battery, or company the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent noncommissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit. Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct. [39 Stat. L. 659.]

“ART. 57. FALSE RETURNS — OMISSION TO RENDER RETURNS.—Every officer commanding a regiment, an independent troop, battery, or company, or a garrison shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct.” [39 Stat. L. 660, as amended by 40 Stat. L. —.]

This section was amended to read as here given by the Act of July 9, 1918, ch. 10. It formerly read as follows:

“ART. 57. FALSE RETURNS — OMISSION TO RENDER RETURNS.—Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of

War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of troops under his command, or of the arms, ammunitions, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct."

" B. DESERTION — ABSENCE WITHOUT LEAVE.

"ART. 58. DESERTION.— Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct. [39 Stat. L. 660.]

"ART. 59. ADVISING OR AIDING ANOTHER TO DESERT.— Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death, or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct. [39 Stat. L. 660.]

"ART. 60. ENTERTAINING A DESERTER.— Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct. [39 Stat. L. 660.]

"ART. 61. ABSENCE WITHOUT LEAVE.— Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct. [39 Stat. L. 660.]

" C. DISRESPECT — INSUBORDINATION — MUTINY.

"ART. 62. DISRESPECT TOWARD THE PRESIDENT, VICE PRESIDENT, CONGRESS, SECRETARY OF WAR, GOVERNORS, LEGISLATURES.— Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct. [39 Stat. L. 660.]

"ART. 63. DISRESPECT TOWARD SUPERIOR OFFICER.— Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct. [39 Stat. L. 660.]

"ART. 64. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR OFFICER.— Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any

violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 660.]

“ART. 65. INSUBORDINATE CONDUCT TOWARD NONCOMMISSIONED OFFICER.— Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a noncommissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a noncommissioned officer while in the execution of his office, shall be punished as a court-martial may direct. [39 Stat. L. 661.]

“ART. 66. MUTINY OR SEDITION.— Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 661.]

“ART. 67. FAILURE TO SUPPRESS MUTINY OR SEDITION.— Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 661.]

“ART. 68. QUARRELS; FRAYS; DISORDERS.— All officers and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer or draws a weapon upon or otherwise threatens or does violence to him shall be punished as a court-martial may direct. [39 Stat. L. 661.]

“ D. ARREST; CONFINEMENT.

“ART. 69. ARREST OR CONFINEMENT OF ACCUSED PERSONS.— An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with the crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest. Any other person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; and when charged with a minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer who breaks his arrest or who escapes from confinement before he is set at liberty by proper authority shall be dismissed from the service or suffer such other punishment as a court-martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest before he

is set at liberty by proper authority shall be punished as a court-martial may direct. [39 Stat. L. 661.]

“ART. 70. INVESTIGATION OF AND ACTION UPON CHARGES.—No person put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled. When any person is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested person be not brought to trial, as herein required, the arrest shall cease. But persons released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest: *Provided*, That in time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him. [39 Stat. L. 661.]

“ART. 71. REFUSAL TO RECEIVE AND KEEP PRISONERS.—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct. [39 Stat. L. 662.]

“ART. 72. REPORT OF PRISONERS RECEIVED.—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report he shall be punished as a court-martial may direct. [39 Stat. L. 662.]

“ART. 73. RELEASING PRISONER WITHOUT PROPER AUTHORITY.—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct. [39 Stat. L. 662.]

“ART. 74. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or

willfully neglects, except in time of war, to deliver over such accused persons to the civil authorities or to aid the officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

“When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence. [39 Stat. L. 662.]

“E. WAR OFFENSES.

“ART. 75. MISBEHAVIOR BEFORE THE ENEMY.—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters, shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 662.]

“ART. 76. SUBORDINATES COMPELLING COMMANDER TO SURRENDER.—If any commander of any garrison, fort, post, camp, guard, or other command is compelled, by the officers or soldiers under his command, to give it up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 663.]

“ART. 77. IMPROPER USE OF COUNTERSIGN.—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such punishment as a court-martial may direct. [39 Stat. L. 663.]

“ART. 78. FORCING A SAFEGUARD.—Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct. [39 Stat. L. 663.]

“ART. 79. CAPTURED PROPERTY TO BE SECURED FOR PUBLIC SERVICE.—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct. [39 Stat. L. 663.]

“ART. 80. DEALING IN CAPTURED OR ABANDONED PROPERTY.—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to

the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties. [39 Stat. L. 663.]

“ART. 81. RELIEVING, CORRESPONDING WITH, OR AIDING THE ENEMY.—Whosoever relieves the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly, or indirectly, shall suffer death, or such other punishment as a court-martial or military commission may direct. [39 Stat. L. 663.]

“ART. 82. SPIES.—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death. [39 Stat. L. 663.]

“ F. MISCELLANEOUS CRIMES AND OFFENSES.

“ART. 83. MILITARY PROPERTY — WILLFUL OR NEGLIGENT LOSS, DAMAGE, OR WRONGFUL DISPOSITION OF.—Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct. [39 Stat. L. 663.]

“ART. 84. WASTE OR UNLAWFUL DISPOSITION OF MILITARY PROPERTY ISSUED TO SOLDIERS.—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct. [39 Stat. L. 663.]

“ART. 85. DRUNK ON DUTY.—Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to military law, except an officer, who is found drunk on duty shall be punished as a court-martial may direct. [39 Stat. L. 663.]

“ART. 86. MISBEHAVIOR OF SENTINEL.—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct. [39 Stat. L. 664.]

“ART. 87. PERSONAL INTEREST IN SALE OF PROVISIONS.—Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessities of life brought into such garrison, fort, barracks, camp, or

other place for the use of the troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct. [39 Stat. L. 664.]

“ART. 88. INTIMIDATION OF PERSONS BRINGING PROVISIONS.—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessities to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct. [39 Stat. L. 664.]

“ART. 89. GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED.—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot shall be punished as a court-martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article one hundred and five, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. [39 Stat. L. 664.]

“ART. 90. PROVOKING SPEECHES OR GESTURES.—No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct. [39 Stat. L. 664.]

“ART. 91. DUELLING.—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who having knowledge of a challenge sent or about to be sent fails to report the fact promptly to the proper authority shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct. [39 Stat. L. 664.]

“ART. 92. MURDER—RAPE.—Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may be [sic] direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace. [39 Stat. L. 664.]

Jurisdiction.—Where a soldier is accused of committing murder after the declaration of the existence of a state of

war, the military authorities have superior jurisdiction over the offense. *Ex p. King*, (E. D. Ky. 1917) 246 Fed. 868.

“ART. 93. VARIOUS CRIMES.—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury, assault with intent to commit any felony, or assault with intent to do bodily harm, shall be punished as a court-martial may direct. [39 Stat. L. 664.]

“ART. 94. FRAUDS AGAINST THE GOVERNMENT.—Any person subject to military law who makes or causes to be made any claim against the United

States, or any officer thereof, knowing such claim to be false or fraudulent; or

“ Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

“ Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

“ Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statements; or

“ Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

“ Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

“ Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

“ Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

“ Who steals, embezzles, knowingly and willingly misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

“ Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

“ Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, receives his

discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. [39 Stat. L. 665.]

“ART. 95. CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN.—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. [39 Stat. L. 666.]

“ART. 96. GENERAL ARTICLE.—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court. [39 Stat. L. 666.]

“ IV. COURTS OF INQUIRY.

“ART. 97. WHEN AND BY WHOM ORDERED.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into. [39 Stat. L. 666.]

“ART. 98. COMPOSITION.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder. [39 Stat. L. 666.]

“ART. 99. CHALLENGES.—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available. [39 Stat. L. 666.]

“ART. 100. OATH OF MEMBERS AND RECORDER.—The recorder of a court of inquiry shall administer to the members the following oath: ‘You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you, God.’ After which the president of the court shall administer to the recorder the following oath: ‘You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you, God.’

“In case of affirmation the closing sentence of adjuration will be omitted. [39 Stat. L. 666.]

“ART. 101. POWERS; PROCEDURE.—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before

courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question. [*39 Stat. L. 666.*]

“ART. 102. OPINION ON MERITS OF CASE.—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so. [*39 Stat. L. 666.*]

“ART. 103. RECORD OF PROCEEDINGS—HOW AUTHENTICATED.—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court. [*39 Stat. L. 666.*]

“V. MISCELLANEOUS PROVISIONS.

“ART. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.—Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

“The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty. [*39 Stat. L. 667.*]

“ART. 105. INJURIES TO PERSON OR PROPERTY—REDRRESS OF.—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine

them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

“Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board. [39 Stat. L. 667.]

“ART. 106. ARREST OF DESERTERS BY CIVIL OFFICIALS.—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States. [39 Stat. L. 667.]

“ART. 107. SOLDIERS TO MAKE GOOD TIME LOST.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve: [39 Stat. L. 667.]

“ART. 108. SOLDIERS—SEPARATION FROM THE SERVICE.—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial. [39 Stat. L. 668.]

“ART. 109. OATH OF ENLISTMENT.—At the time of his enlistment every soldier shall take the following oath or affirmation: ‘I, ———, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against

all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War.' This oath or affirmation may be taken before any officer. [39 Stat. L. 668.]

"ART. 110. CERTAIN ARTICLES TO BE READ AND EXPLAINED.—Articles one, two, and twenty-nine, fifty-four to ninety-six, inclusive, and one hundred and four to one hundred and nine, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States. [39 Stat. L. 668.]

"ART. 111. COPY OF RECORD OF TRIAL.—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial. [39 Stat. L. 668.]

"ART. 112. EFFECTS OF DECEASED PERSONS — DISPOSITION OF.—In case of the death of any person subject to military law, the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after the collection of such effects said summary court shall transmit such effects, and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to his son, daughter, father, mother, brother, or sister, in the order named, if such be found by said court, or to the beneficiary named by the deceased, if such be found by said court, and such court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to, or readily ascertainable by, said court, and the court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers and enlisted men of the Army.

"The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military

hospital outside of the District of Columbia where sent from the home for treatment." [39 Stat. L. 668, as amended by 40 Stat. L. —.]

This section was amended to read as here given by the Act of July 9, 1918, ch. 10. It formerly read as follows:

"ART. 112. EFFECTS OF DECEASED PERSONS — DISPOSITION OF.— In case of the death of any person subject to military law, the commanding officer of the place or command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to convert such effects into cash, by public or private sale, not earlier than thirty days after the death of the deceased, and to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposit, accompanied by any will or other papers of value belonging to the deceased, an inventory of the effects secured by said summary court, and a full account of his transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers or enlisted men of the Army; but if in the meantime the legal representative, or widow, shall present himself or herself to take possession of decedent's estate the said summary court shall turn over to him or her all effects not sold and cash belonging to said estate, together with an inventory and account, and make to the War Department a full report of his transactions.

"The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment."

"ART. 113. INQUESTS.— When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death. [39 Stat. L. 669.]

"ART. 114. AUTHORITY TO ADMINISTER OATHS.—Any judge advocate or acting judge advocate, the president of a general or special court-martial, any summary court-martial, the judge advocate or any assistant judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law. [39 Stat. L. 669.]

"ART. 115. APPOINTMENT OF REPORTERS AND INTERPRETERS.— Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission, or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of

and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission. [39 Stat. L. 669.]

“ART. 116. POWERS OF ASSISTANT JUDGE ADVOCATES.—An assistant judge advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the judge advocate of the court. [39 Stat. L. 669.]

“ART. 117. REMOVAL OF CIVIL SUITS.—When any civil suit or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section thirty-three of the Act entitled ‘An Act to codify, revise, and amend the laws relating to the judiciary,’ approved March third, nineteen hundred and eleven, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause. [39 Stat. L. 669.]

“ART. 118. OFFICERS — SEPARATION FROM SERVICE.—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction. [39 Stat. L. 669.]

“ART. 119. RANK AND PRECEDENCE AMONG REGULARS, MILITIA, AND VOLUNTEERS.—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted or called into service of the United States; and, third, officers of the volunteer forces: *Provided*, That officers of the Regu-

lar Army holding commissions in forces drafted or called into the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the Regular Army; the rank of officers of the Regular Army under commissions in the National Guard as such shall not, for the purposes of this article, be held to antedate the acceptance of such officers into the service of the United States under said commissions. [39 Stat. L. 670.]

“ART. 120. COMMAND WHEN DIFFERENT CORPS OR COMMANDS HAPPEN TO JOIN.—When different corps or commands of the military forces of the United States happen to join or do duty together the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President. [39 Stat. L. 670.]

“ART. 121. COMPLAINTS OF WRONGS.—Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.” [39 Stat. L. 670.]

SEC. 4. [Time of taking effect of amended Articles of War.] The provisions of section three of this Act shall take effect and be in force on and after the first day of March, nineteen hundred and seventeen: *Provided*, That articles four, thirteen, fourteen, fifteen, twenty-nine, forty-seven, forty-nine, and ninety-two shall take effect immediately upon the approval of this Act. [39 Stat. L. 670.]

SEC. 5. [Offenses, etc., committed prior to taking effect of Act — punishment.] That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of this Act, under any law embraced in or modified, changed, or repealed by this Act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this Act had not been passed. [39 Stat. L. 670.]

SEC. 6. [Inconsistent laws — repeal.] All laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed. [39 Stat. L. 670.]

An Act Authorizing transfer of certain retired Army officers to the active list.

[Act of Feb. 23, 1917, ch. 116, 39 Stat. L. 937.]

[Retired army officers — transfer to active lists.] That hereafter the President be, and he is hereby, authorized, within one year of the approval

of this Act, by and with the advice and consent of the Senate, to transfer, upon application, to the active list of the Army any officer under fifty years of age who may have been transferred heretofore from the active to the retired list of the Army under the Act to provide for recognizing the services of certain officers of the Army, Navy, and Public Health Service for their services in connection with the construction of the Panama Canal, and for other purposes, approved March fourth, nineteen hundred and fifteen: *Provided*, That such officers shall take rank at the foot of the respective grades which they held at the time of their retirement and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted, and shall be promoted on the same date as the officer next above him in rank, and shall be commissioned in the arm or department of the Army from which he was retired: *Provided further*, That such officer shall stand a satisfactory medical examination, and when promoted shall stand the medical and professional examinations provided for by law: *And provided further*, That any officer transferred to the active list under this Act shall not again be entitled to the benefits of the Panama Canal Act described above, except when retired for age or for physical disability incurred in the line of duty. [39 Stat. L. 937.]

For Act of March 4, 1915, see 1916 Supp. Fed. Stat. Ann. 222.

An Act Making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes.

[Act of May 12, 1917, ch. 12, 40 Stat. L. 41.]¹

* * * [Army service schools — Employment of translator.] Not exceeding \$100 per month may be used for the payment of one translator, to be appointed by the commandant of the Army service schools with the approval of the Secretary of War, * * * [40 Stat. L. 41.]

* * * [Field artillery — second lieutenants — assignments to Fort Sill.] That officers in the grade of second lieutenant in the Field Artillery may be assigned, for the period of one year, to batteries stationed at the School of Fire for Field Artillery at Fort Sill, Oklahoma, for the purpose of pursuing courses of practical instruction in field artillery. [40 Stat. L. 41.]

* * * [Aviation — land sites for schools, etc.] That the Secretary of War is hereby authorized to acquire, by purchase, donation, or by condemnation, such land sites throughout the United States as are immediately necessary for the permanent establishment of aviation schools, aviation posts, and experimental aviation stations and proving grounds for the United States Army. [40 Stat. L. 42.]

¹ This Act contained, besides the general provisions set out at this place, certain general provisions which amended or in some way affected prior Acts enacted during the period covered by the 1918 Supp. Fed. Stat. Ann. These provisions will be found under the respective Acts which they amend.

* * * **[Second hand vehicles, etc.—exchange.]** That hereafter motor-propelled vehicles, aeroplanes, engines, and parts thereof may be exchanged in part payment for new equipment of the same or similar character, to be used for the same purpose as those proposed to be exchanged. [40 Stat. L. 43.]

* * * **[Signal Corps — aviation section — detail of officers.]** That hereafter nothing in section twenty-five of the National Defense Act of June third, nineteen hundred and sixteen, shall be held to prevent the detail of an officer in the aviation section of the Signal Corps. [40 Stat. L. 43.]

For Act of June 3, 1916, sec. 25, see *supra*, p. 944.

* * * **[Signal Corps — aviation section — mileage to officers.]** That mileage to officers in the aviation section, Signal Corps, traveling on duty in connection with aviation service shall be paid from the appropriation for the work in connection with which the travel is performed. [40 Stat. L. 43.]

* * * **[Signal Corps — operation of telegraph lines, etc.— forwarding charges.]** That hereafter the Signal Corps, in its operation of military telegraph lines, cables, or radio stations, is authorized, in the discretion of the Secretary of War, to collect forwarding charges due connecting commercial telegraph or radio companies for the transmission of Government radiograms or telegrams over their lines, and to this end, under such regulations as may be prescribed by the Secretary of War, it can present vouchers to disbursing officers for payment or file claims with auditors of the Treasury Department for the amount of such forwarding charges. [40 Stat. L. 43.]

[Increases in army — officers — appointments — promotions.] That of the whole number of officers of Cavalry, Field Artillery, Coast Artillery Corps, Infantry, and of Engineers serving with the enlisted force of the Corps of Engineers necessary to fill vacancies created or caused in said arms of the service by reason of the second increment, authorized in said arms by Act of Congress approved June third, nineteen hundred and sixteen, not more than one-fourth shall be appointed or promoted until, exclusive of enlisted men belonging to said arms on June thirtieth, nineteen hundred and sixteen, at least one-fourth of the second increment of enlisted men authorized for said arms by said Act shall have been enlisted; not more than one-half of said whole number of officers shall be appointed or promoted until at least one-half of said increment of enlisted men shall have been enlisted; and not more than three-fourths of said whole number of officers shall be appointed or promoted until at least three-fourths of said increment of enlisted men shall have been enlisted. And all officers promoted in accordance with the terms of this proviso shall take rank, respectively, from the dates on which their promotions shall have become lawful under the terms of this proviso. [40 Stat. L. 44.]

For Act of June 3, 1916, see *supra*, p. 921.

[Increases in army — second lieutenants.]

A provision of this Act relating to second lieutenants amends the first part of the second paragraph of section 24 of the National Defense Act of June 3, 1916, ch. 134, 39 Stat. L. 166, and has consequently been transferred to that Act and will be found *supra*, p. 944.

* * * **[Enlisted men — pay — marksmen, etc.]** That that paragraph of the Act of May eleventh, nineteen hundred and eight (Thirty-fifth Statutes at Large, page one hundred and ten), which provides for additional pay to marksmen, and so forth, is amended to read as follows:

“That hereafter enlisted men now qualified or hereafter qualifying as marksmen shall receive \$2 per month; as sharpshooters, \$3 per month; as expert riflemen, \$5 per month; as second-class gunners, \$2 per month; as first-class gunners, \$3 per month; as expert first-class gunners, Field Artillery, \$5 per month; as gun pointers, gun commanders, observers second-class, chief planters, and chief loaders, \$7 per month; as plotters, observers first-class, casemate electricians, and coxswains, \$9 per month, all in addition to their pay, under such regulations as the Secretary of War may prescribe, but no man shall receive at the same time additional pay for more than one of the classifications named in this section.” [40 Stat. L. 45.]

For Act of May 11, 1908, see 1909 Supp. Fed. Stat. Ann. 696.

* * * **[Clerks, messengers and laborers — assignments.]** That said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided further*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau in the War Department. [40 Stat. L. 46.]

* * * **[Retired officers — assignments to active duty — staff duties.]** That assignments which have been or may hereafter be made, of retired officers of the Army to active duty as acting quartermasters shall be regarded as assignments to staff duties not involving service with troops within the meaning of the Act of Congress approved April twenty-third, nineteen hundred and four. [40 Stat. L. 48.]

For Act of April 23, 1904, see 10 Fed. Stat. Ann. 429.

* * * **[Retired officers — longevity pay.]** That hereafter any retired officer of the Army who has been detailed to active duty, and who has since his retirement, served on active detail shall be entitled to increases of longevity pay to be computed as provided by existing statute for the computation of longevity pay, for the time of his service before retirement and on active detail since his retirement. [40 Stat. L. 48.]

* * * **[Quartermaster Corps — officers — public moneys.]** Hereafter, under such regulations as may be prescribed by the Secretary of War, officers of the Quartermaster Corps accountable for public moneys may intrust such moneys to other officers for the purpose of having them

make disbursements as their agents, and the officers to whom the moneys are intrusted, as well as the officers who intrust it to them, shall be held pecuniarily responsible therefor to the United States. [40 Stat. L. 50.]

* * * [Disciplinary barracks guard — extra-duty pay.] That hereafter the extra-duty pay to the United States disciplinary barracks guard shall be at the following rates per day: Battalion sergeants major, first sergeants, mess sergeants, and sergeants, 35 cents; corporals, 30 cents; cooks and mechanics, privates first class, privates, and buglers, 20 cents; * * * [40 Stat. L. 52.]

* * * [Recruits — premiums.] That section eleven hundred and twenty of the Revised Statutes of the United States be, and the same is hereby, repealed. [40 Stat. L. 53.]

R. S. sec. 1120 read as follows: "A premium of two dollars shall be paid to any citizen, noncommissioned officer, or soldier for each accepted recruit he may bring to a recruiting rendezvous."

* * * [Horses and mules — sale.] That the Secretary of War is hereby authorized upon the approval of this Act to sell for cash at either public or private sale such horses and mules as are not needed for either the Regular Army or the National Guard and the proceeds shall be turned into the United States Treasury as miscellaneous receipts. [40 Stat. L. 55.]

* * * [Quartermaster Corps — civilian employees — compensation.] That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [40 Stat. L. 56.]

* * * [Vocational training.] For the employment of the necessary civilian instructors in the most important trades, for the purchase of carpenter's, machinist's, plumber's, mason's, electrician's, and such other tools and equipment as may be required, including machines used in connection with the trades for the purchase of material and other supplies necessary for instruction and training purposes and the construction of such buildings needed for vocational training in agriculture for shops, storage, and shelter of machinery as may be necessary to carry out the provisions of section twenty-seven of the Act approved June third, nineteen hundred and sixteen, authorizing, in addition to the military training of soldiers while in the active service, means for securing an opportunity to study and receive instruction upon educational lines of such character as to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations, part of this instruction to consist of vocational education either in agriculture or the mechanic arts, \$250,000: *Provided, however,* That the Secretary of War may, in his discretion, in order to carry out the last provision, select one or more and not exceeding three regiments of Infantry, Cavalry, or Field Artillery to be stationed at a regimental post within the

continental limits of the United States on or before July first, nineteen hundred and seventeen, and may transfer from such regiment to other organizations any enlisted man or men who do not desire educational or vocational training and instruction such as is contemplated by the concluding paragraph of section twenty-seven of the National Defense Act approved June third, nineteen hundred and sixteen, and may transfer thereto from other organizations a number of enlisted men to be selected under such rules and regulations as he may prescribe who do desire such instruction and training or may receive recruits thereto sufficient to bring the enlisted strength of the regiment up to that authorized by law. During such part of the year beginning July first, nineteen hundred and seventeen, and thereafter as the enlisted men of the regiment so selected shall not be engaged on field service or in field training they shall be under training or instruction nine hours of each day, or as near that number of hours as possible, Sundays and holidays excepted, at least three hours of each day to be devoted to military training and six hours of each day, or as nearly that as possible, to educational and vocational training and instruction such as is contemplated by the concluding paragraph of section twenty-seven of the National Defense Act. The educational and vocational training to be had under civilian instructors employed for that purpose under such rules and regulations as the Secretary of War shall prescribe: *And provided further*, That said civilian instructors, as well as the discipline of the said post, shall be under the jurisdiction of the military authorities, under such rules and regulations as the Secretary of War may prescribe. [40 Stat. L. 59.]

For Act of June 3, 1916, see *supra*, p. 921.

* * * [Motor ambulances — purchase — advertisement.] That the Secretary of War may in his discretion select types and makes of motor ambulances for the Army and authorize their purchase without regard to the laws prescribing advertisement for proposals for supplies and material for the Army; * * * [40 Stat. L. 60.]

* * * [Rifle clubs — instructors.] That the Secretary of War, in his discretion, and under such regulations as he may prescribe, may authorize the detail of enlisted men of the Army as temporary instructors in rifle practice to organized rifle clubs requesting such instruction. [40 Stat. L. 64.]

* * * [Ordnance Department — civilian employees — leave of absence.] That hereafter any civilian employee of the Ordnance Department who is a citizen of the United States and employed at any station outside the continental limits of the United States may, in the discretion of the Secretary of War, after at least two years' continuous, faithful, and satisfactory service abroad, and subject to the interests of the public service, be granted accrued leave of absence, with pay, for each year of service, and if an employee should elect to postpone the taking of any or all of the leave to which he may be entitled in pursuance hereof such leave may be allowed to accumulate for a period of not exceeding four years, the rate

of pay for accrued leave to be the rate obtaining at the time the leave is granted. [40 Stat. L. 65.]

* * * [Ordnance Department — officers — mileage.] That mileage to officers of the Ordnance Department traveling on duty in connection with that department shall be paid from the appropriation for the work in connection with which the travel is performed. [40 Stat. L. 65.]

* * * [Reserve Officers' Training Corps — institution maintaining — supplies and equipment.] For the procurement and issue, under such regulations as may be prescribed by the Secretary of War, to institutions as which one or more units of the Reserve Officers' Training Corps are maintained, such public animals, uniforms, equipment, and means of transportation as he may deem necessary, and to forage at the expense of the United States public animals so issued; for transporting said animals and other authorized equipment from place of issue to the several institutions and return of same to place of issue when necessary; for the maintenance of camps for the further practical instruction of the members of the Reserve Officers' Training Corps, and for transporting members of such corps to and from such camps, and to subsist them while traveling to and from such camps and while remaining therein so far as appropriations will permit; for the payment of commutation of subsistence to members of the senior division of the Reserve Officers' Training Corps, at such rate, not exceeding the cost of the garrison ration prescribed for the Army, as authorized in the Act of Congress approved June third, nineteen hundred and sixteen, \$4,385,000: *Provided*, That \$1,215,000 of the amount herein appropriated shall be immediately available.

Provided further, That the Secretary of War may, in his discretion and under such regulations as he may prescribe, permit such institutions to furnish their own uniforms and receive as commutation therefor the sum allotted by the Secretary of War to such institutions for uniforms. [40 Stat. L. 71.]

* * * [Officers' Reserve Corps — government employees — leave of absence.] That all officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year. [40 Stat. L. 72.]

* * * [Officers' Reserve Corps — government employees — restoration to former positions.] * * * That members of the Officers' Reserve Corps who are in the employ of the United States Government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty. [40 Stat. L. 72.]

* * * **[Officers' Reserve Corps — gratuitous services of members.]** That section three of the Act approved February twenty-seventh, nineteen hundred and six, entitled, "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and six, and for prior years and for other purposes," shall not be construed to prohibit the Secretary of War from accepting the gratuitous services of members of the Officers' Reserve Corps of the Army in the furtherance of the enrollment, organization, and training of the Officers' Reserve Corps, the Reserve Officers' Training Corps, or the Enlisted Reserve Corps of the Army or in consultation upon matters relating to the military service. [40 Stat. L. 72.]

For Act of Feb. 27, 1906, § 3, see 1909 Supp. Fed. Stat. Ann. 124. The Act amended R. S. sec. 3679 and as amended is set out in 3 Fed. Stat. Ann. (2d ed.) 138.

* * * **[Officers' Reserve Corps — appointment of former officers of Regular Army, etc.— rank.]** That any former officer of the Regular Army, the Volunteer Army, the Organized Militia, or the National Guard, under the age of sixty-four years and who has resigned or been honorably discharged from the service after a total commissioned service of not less than three years in either the Regular Army, the Volunteer Army, the Organized Militia, or the National Guard, may, upon such examination and within such age limits as may be prescribed by the President, be appointed and commissioned, in the discretion of the President, in any appropriate arm, staff corps, department or section of the Officers' Reserve Corps, with rank not more than one grade higher than any previously held by the officer in either of said forces, but in no case above that of lieutenant colonel. [40 Stat. L. 73.]

* * * **[Ordnance Department — employees — monthly compensation.]** That the following provision contained in the Act approved April twenty-third, nineteen hundred and four, "Hereafter all employees of the Ordnance Department whose compensation is annual shall be paid monthly," is hereby repealed. [40 Stat. L. 74.]

For Act of April 23, 1904, see 10 Fed. Stat. Ann. 431.

* * * **[Enlisted men of Army commissioned in National Guard — reenlistment in Army — status.]** That the enlisted men who were discharged from the Army to accept a commission in the National Guard, or in any volunteer force that may be authorized in the future, at the call of the President, June eighteen, nineteen hundred and sixteen, be restored to their original status upon reenlisting in the Regular Army: *Provided*, That they reenlist within three months from date of muster out of the United States Service, and that in computing service for retirement and continuous service pay, service as an officer in the National Guard, or in any volunteer force that may be authorized in the future, while in the service of the United States, be counted. [40 Stat. L. 74.]

* * * **[Enlisted men of army commissioned in Officers' Reserve Corps, etc.— reenlistment in army — continuous service pay.]** That hereafter any enlisted man of the Army who shall be discharged to enable him

to accept a commission in the Officers' Reserve Corps, or in any National Guard or militia organization, or in any volunteer force, that may be authorized in the future, and who shall enlist in the Army within three months after the termination of his connection as an officer with that corps or with any organization of the National Guard or militia, or a volunteer force, or during the continuation of his connection therewith, as an officer, shall, in computing continuous service pay now authorized by law, be entitled to credit for the period of time actually served by him prior to said discharge, and in computing service for retirement and continuous service pay, service as an officer of the National Guard, while in the service of the United States, service in any volunteer force, and service in the Officers' Reserve Corps in active service shall be counted. [40 Stat. L. 74.]

* * * [Buildings, military post or grounds — expenditures — approval of Secretary of War.] That hereafter no expenditure exceeding \$5,000 shall be made upon any building or military post or grounds about the same without the approval of the Secretary of War, upon detailed estimates submitted to him. [40 Stat. L. 74.]

An Act To Authorize the President to increase temporarily the Military Establishment of the United States.

[Act of May 18, 1917, ch. 15, 40 Stat. L. 76.]

[SEC. 1.] [Temporary increase of army — appointments to fill vacancies — drafting of National Guard and National Guard Reserves — draft of additional forces — officers — batteries — volunteer divisions.] That in view of the existing emergency, which demands the raising of troops in addition to those now available, the President be, and he is hereby, authorized —

This Act was affected by the Army Appropriation Act of July 9, 1918, ch. 21, which provided as follows:

"That the authority conferred upon the President by the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," is hereby extended so as to authorize him during each fiscal year to raise by draft as provided in said Act and Acts amendatory thereof the maximum number of men which may be organized, equipped, trained, and used during such year for the prosecution of the present war until the same shall have been brought to a successful conclusion."

First. Immediately to raise, organize, officer, and equip all or such number of increments of the Regular Army provided by the national defense Act approved June third, nineteen hundred and sixteen, or such parts thereof as he may deem necessary; to raise all organizations of the Regular Army, including those added by such increments, to the maximum enlisted strength authorized by law. Vacancies in the Regular Army created or caused by the addition of increments as herein authorized which can not be filled by promotion may be filled by temporary appointment for the period of the emergency or until replaced by permanent appointments or by provisional appointments made under the provisions of section twenty-three of the national defense Act, approved June third, nineteen hundred

and sixteen, and hereafter provisional appointments under said section may be terminated whenever it is determined, in the manner prescribed by the President, that the officer has not the suitability and fitness requisite for permanent appointment.

Second. To draft into the military service of the United States, organize, and officer, in accordance with the provisions of section one hundred and eleven of said national defense Act, so far as the provisions of said section may be applicable and not inconsistent with the terms of this Act, any or all members of the National Guard and of the National Guard Reserves, and said members so drafted into the military service of the United States shall serve therein for the period of the existing emergency unless sooner discharged: *Provided*, That when so drafted the organizations or units of the National Guard shall, so far as practicable, retain the State designations of their respective organizations.

Third. To raise by draft as herein provided, organize and equip an additional force of five hundred thousand enlisted men, or such part or parts thereof as he may at any time deem necessary, and to provide the necessary officers, line and staff, for said force and for organizations of the other forces hereby authorized, or by combining organizations of said other forces, by ordering members of the Officers' Reserve Corps to temporary duty in accordance with the provisions of section thirty-eight of the national defense Act approved June third, nineteen hundred and sixteen; by appointment from the Regular Army, the Officers' Reserve Corps, from those duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three (Thirty-second Statutes at Large, page seven hundred and seventy-five), from the members of the National Guard drafted into the service of the United States, from those who have been graduated from educational institutions at which military instruction is compulsory, or from those who have had honorable service in the Regular Army, the National Guard, or in the volunteer forces, or from the country at large; by assigning retired officers of the Regular Army to active duty with such force with their rank on the retired list and the full pay and allowances of their grade; or by the appointment of retired officers and enlisted men, active or retired, of the Regular Army as commissioned officers in such forces: *Provided*, That the organization of said force shall be the same as that of the corresponding organizations of the Regular Army: *Provided further*, That the President is authorized to increase or decrease the number of organizations prescribed for the typical brigades, divisions, or army corps of the Regular Army, and to prescribe such new and different organizations and personnel for army corps, divisions, brigades, regiments, battalions, squadrons, companies, troops, and batteries as the efficiency of the service may require: *Provided further*, That the number of organizations in a regiment shall not be increased nor shall the number of regiments be decreased: *Provided further*, That the President in his discretion may organize, officer, and equip for each Infantry and Cavalry brigade three machine-gun companies, and for each Infantry and Cavalry division four machine-gun companies, all in addition to the machine-gun companies comprised in organizations included in such brigades and divisions: *Provided further*, That the President in his discretion may organize for each division one armored motor-

car machine-gun company. The machine-gun companies organized under this section shall consist of such commissioned and enlisted personnel and be equipped in such manner as the President may prescribe: *And provided further*, That officers with rank not above that of colonel shall be appointed by the President alone, and officers above that grade by the President by and with the advice and consent of the Senate: *Provided further*, That the President may in his discretion recommission in the Coast Guard persons who have heretofore held commissions in the Revenue-Cutter Service or the Coast Guard and have left the service honorably, after ascertaining that they are qualified for service physically, morally, and as to age and military fitness.

Fourth. The President is further authorized, in his discretion and at such time as he may determine, to raise and begin the training of an additional force of five hundred thousand men organized, officered, and equipped, as provided for the force first mentioned in the preceding paragraph of this section.

Fifth. To raise by draft, organize, equip, and officer, as provided in the third paragraph of this section, in addition to and for each of the above forces, such recruit training units as he may deem necessary for the maintenance of such forces at the maximum strength.

Sixth. To raise, organize, officer, and maintain during the emergency such number of ammunition batteries and battalions, depot batteries and battalions, and such artillery parks, with such numbers and grades of personnel as he may deem necessary. Such organizations shall be officered in the manner provided in the third paragraph of this section, and enlisted men may be assigned to said organization from any of the forces herein provided for or raised by selective draft as by this Act provided.

Seventh. The President is further authorized to raise and maintain by voluntary enlistment, to organize, and equip, not to exceed four infantry divisions, the officers of which shall be selected in the manner provided by paragraph three of section one of this Act: *Provided*, That the organization of said force shall be the same as that of the corresponding organization of the Regular Army: *And provided further*, That there shall be no enlistments in said force of men under twenty-five years of age at time of enlisting: *And provided further*, That no such volunteer force shall be accepted in any unit smaller than a division. [40 Stat. L. 76.]

This is the first section of the Act known as "Draft Act," the "National Conscription Act," or more generally as the "Selective Service Act."

The Act of June 3, 1916, ch. 134, § 23, mentioned in the first paragraph of this section, is given *supra*, p. 941.

The Act of June 3, 1916, ch. 134, § 111, mentioned in the second paragraph of this section, is given in *MILITIA, ante*, p. 458s.

The Act of June 3, 1916, ch. 134, § 38, mentioned in the third paragraph of this section, is given *supra*, p. 954.

The Act of Jan. 21, 1903, ch. 196, § 23, also mentioned in the third paragraph of this section, is given in 10 Fed. Stat. Ann. 232.

The period of service of men selected by draft, and all enlistments under the provisions of this act, was determined by the Act of June 15, 1917, ch. 29, § 4, *infra*, p. 1024.

Constitutionality of Act.—The United States Selective Service Act of 1917 was sustained by the Supreme Court in "Selective Draft Law Cases," *Arver v. U. S.*, (1918) 245 U. S. 366, 38 S. Ct. 159, 62 U. S. (L. ed.) —, Ann. Cas. 1918B 856, *reaffirmed* in *Pox v. Wood*, (1918) 247 U. S. 3, 38 S. Ct. 159, 62 U. S. (L. ed.) —; *Ruthenberg v. U. S.*, (1917) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L.

ed.) —; *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) —; *Kramer v. U. S.*, (1918) 245 U. S. 478, 38 S. Ct. 168, 62 U. S. (L. ed.) —; *Yangar v. U. S.*, (1918) 246 U. S. 649, 38 S. Ct. 332, 62 U. S. (L. ed.) —; *Jones v. Perkins*, (1918) 245 U. S. 390, 38 S. Ct. 166, 62 U. S. (L. ed.) —, *affirming* (1917) 243 Fed. 997; *Breitmayer v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 929. Prior to the decision first above cited its constitutionality had been upheld by every court passing on the question. See *U. S. v. Sugar*, (E. D. Mich. 1917) 243 Fed. 664; *Story v. Perkins*, (S. D. Ga. 1917) 243 Fed. 997; *U. S. v. Stephens*, (D. C. Del. 1917) 245 Fed. 956; *Angelus v. Sullivan*, (C. C. A. 2d Cir. 1917) 246 Fed. 54, 158 C. C. A. 280; *Claudius v. Davie*, (Cal. 1917) 165 Pac. 689.

Purpose for which draft may be made.—It was contended in several cases that the power to draft members of the militia was limited to the purposes stated in the Constitution (art. 1, § 8) for which the militia as such could be called out. But this contention was overruled in *Arver v. U. S.*, (1918) 245 U. S. 366, 38 S. Ct. 159, 62 U. S. (L. ed.) —, Ann. Cas. 1918B 456.

Persons subject to conscription—aliens.—In *Ex p. Hutfliis*, (W. D. N. Y. 1907) 245 Fed. 798, the court said: "The relator, though clearly not liable or exposed to military duty on account of his alienage and failure to apply for citizenship, is nevertheless required to claim exemption, if he wishes to be excused from serving in the army."

The power to conscript declarant aliens is not affected by any treaty provision. *U. S. v. Finley*, (S. D. N. Y. 1917) 245 Fed. 871; *Ex p. Blazekovic*, (E. D. Mich. 1918) 248 Fed. 327; *Summertime v. Local Board Div. No. 10*, (E. D. Mich. 1917) 248 Fed. 832; *U. S. v. Bell*, (E. D. N. Y. 1918) 248 Fed. 992.

An alien who has declared his intention to become a citizen is subject to conscription though he has allowed his declaration to lapse by failing for more than seven years to apply for naturalization. (*U. S. v. Mitchell*, (E. D. N. Y. 1918) 248 Fed. 997), or though his application for naturalization has been denied. *Gazzola v. Commanding Officer*, (E. D. N. Y. 1918) 248 Fed. 1001.

Liability to military service is to be determined as of the time when a person becomes liable thereto without regard to subsequent events. Thus the declaration of war against Austria did not operate to release declarant aliens of Austrian birth. *U. S. v. Bell*, (E. D. N. Y. 1918) 248 Fed. 1002; *Halpern v. Commanding Officer*, (E. D. N. Y. 1918) 248 Fed. 1003.

The phrase "liability to military service" in section 2 of this Act does not

exclude from the operation of the Act citizens of Spain, as well as of other countries, who have declared their intention to become citizens under the United States naturalization laws, even though the terms of an existing treaty exempt therein. *Ex p. Larrucea*, (S. D. Cal. 1917) 249 Fed. 981.

Exemptions—Clergyman.—A conscription act exempting clergymen and divinity students is not invalid as being a law for the establishment of religion. *U. S. v. Stephens*, (D. C. Del. 1917) 245 Fed. 956.

Discharged soldier.—A person who enlisted in the United States Army before the war and thereafter purchased his discharge is not exempt from conscription. *Ex p. Cohen*, (D. C. Mass. 1917) 245 Fed. 667.

Person duly passed.—A person who has been duly passed and mustered into the service is not entitled to a discharge because he was exempt by reason of physical disability and was passed by the medical examiner as a matter of personal spite. *Ex p. Blackington*, (D. C. Mass. 1917) 245 Fed. 801; *affirmed* (C. C. A. 1st Cir. 1918) 248 Fed. 124.

Person convicted of crime.—Where one has been convicted of an offense involving moral turpitude and has been taken in custody by the local authorities before he was required to report to the local board for military duty, he is not entitled to discharge from the state authorities, but is liable for military service at the expiration of his sentence. *Ex p. Callway*, (M. D. Ala. 1917) 246 Fed. 263.

"Married man whose wife or child is dependent upon his labor for support," within the meaning of the regulations promulgated by the President under section 4 of this Act includes mental or physical labor, and the dependent must be supported by such labor. *U. S. v. Miller*, (S. D. Fla. 1918) 249 Fed. 985.

Proof of alienage.—Exemption on the ground of alienage is not absolute but must be claimed. *Ex p. Hutfliis*, (W. D. N. Y. 1917) 245 Fed. 798; *U. S. v. Finley*, (S. D. N. Y. 1917) 245 Fed. 871.

Determination of liability to conscription—Review by courts—Generally.—Concerning the respective jurisdiction of the local boards and the courts, it was said in *U. S. v. Heyburn*, (E. D. Pa. 1917) 245 Fed. 360: "To whom the call goes out, and who is to make an answering response, are matters germane to, and indeed necessarily involved in, the exercise of the war-making power. Questions which necessarily arise, or may be expected to arise, must be determined in some way and by some tribunal. The war-making power may therefore provide the required system and constitute the needed tribunals. It is not only lawful, but fitting, that they should be military

tribunals. Congress has constituted such tribunals for the war in which our people are now engaged. The lawful and independent jurisdiction which belongs to other tribunals belongs to them. To this jurisdiction all must submit, and all who are well disposed to our country will willingly submit. Upon whom of those within the prescribed age limits, who have registered, the duty of military service has been imposed, because of their being citizens or denizens who have declared their intention to become citizens; who are to be excluded from the privilege of service, because alien enemies; who are exempt from service, because of the existence of any of the prescribed reasons for exemption; who are ill fitted for the performance of military service; and who have responsibilities and duties elsewhere so imperative and urgent as to prevent active military service—are all matters of which these tribunals have jurisdiction. They, indeed, constitute in an emphatic sense the subject-matter of that jurisdiction."

Claim of alienage.—Laying down the broad rule that the decision of a draft board on a question within its jurisdiction will not be reviewed, the courts have held that they have no power to review a finding against a claim of alienage. *U. S. v. Finley*, (S. D. N. Y. 1917) 245 Fed. 871; *Angelus v. Sullivan*, (C. C. A. 2d Cir. 1917) 246 Fed. 54, 158 C. C. A. 280; *U. S. v. Kinkead*, (D. C. N. J. 1918) 248 Fed. 141; *Ex p. Blazekovic*, (E. D. Mich. 1918) 248 Fed. 327; *Summertime v. Local Board*, Div. No. 10, (E. D. Mich. 1917) 248 Fed. 832; *U. S. v. Bell*, (E. D. N. Y. 1918) 248 Fed. 992; *U. S. v. Mitchell*, (E. D. N. Y. 1918) 248 Fed. 997; *Halpern v. Commanding Officer*, (E. D. N. Y. 1918) 248 Fed. 1003. *Compare, Ex p. Beck*, (D. C. Mont. 1917) 245 Fed. 967.

However, in *Ex p. Hutfliis*, (W. D. N. Y. 1907) 245 Fed. 798, the court while disclaiming a power of review allowed the petitioner ten days to apply to the adjutant general for permission to reopen the case before the board, it appearing that he had ignorantly failed to claim that he was an alien.

Dependency.—The finding of a draft board as to dependency is not subject to judicial review. *Ex p. Dostol*, (N. D. Ohio 1917) 243 Fed. 664.

Physical disability.—The finding of a draft board as to physical disability is not subject to judicial review. *In re Traina*, (E. D. N. Y. 1918) 248 Fed. 1004; *U. S. v. Commanding Officer*, (E. D. N. Y. 1918) 248 Fed. 1005; *De Gennaro v. Johnson*, (E. D. N. Y. 1918) 249 Fed. 504.

Conscientious objections.—A ruling against an exemption claimed on the ground of membership in a sect con-

scientiously opposed to war, is not subject to review by the courts. *Franke v. Murray*, (C. C. A.) 248 Fed. 865.

Offenses against conscription law—Generally.—Among the offenses created by sections 5 and 6 of this Act, *infra*, p. 1016, are failure to register thereunder and aiding or advising or procuring persons to fail or refuse to register. As to the power to create these and similar offenses, see the note to *Masses Pub. Co. v. Patten*, Ann. Cas. 1918B 999, 1009.

A conspiracy to violate this Act by means of preventing persons subject to registration from performing their duty to register is punishable as a conspiracy to defraud the United States within the meaning of PENAL LAWS, 1909 Supp., p. 415, § 37, re-enacting R. S. sec. 5440, in CONSPIRACY, vol. II, p. 5440. *U. S. v. Galleanni*, (Mass. 1917) 245 Fed. 977.

A conspiracy to induce persons, who were under the duty to register, to disobey the law by failing to register, was punishable under section 37 of PENAL LAWS, 1909 Supp., p. 415. *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) —.

It is an indictable offense at common law to counsel and solicit a person subject to registration not to register. "But no statute of the United States makes such solicitation criminal." *U. S. v. Galleanni*, (Mass. 1917) 245 Fed. 977, holding, however, that a conspiracy to commit the said common-law offense is punishable as a conspiracy to commit "any offense against the United States," under PENAL LAWS, 1909 Supp., p. 415, § 37.

A conspiracy formed before the enactment of the Conscription Act to resist conscription has been held to be a criminal offense. *U. S. v. Bryant*, (N. D. Tex. 1917) 245 Fed. 682.

Insubordination.—In a prosecution for an attempt to cause insubordination in the military forces of the United States, it has been held that persons who have registered and received their serial numbers are part of the military forces. *U. S. v. Sugarman*, (D. C. Minn. 1917) 245 Fed. 604.

Indictment.—An indictment for conspiracy to obstruct the enforcement of the Conscription Law need not allege that any person was in fact procured to refuse to register. *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) —; *U. S. v. Sugar*, (E. D. Mich. 1917) 243 Fed. 423. And see *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977. The rule is otherwise if the defendant is charged not with conspiracy but with aiding or advising a failure to register. *U. S. v. Sugar*, (E. D. Mich. 1917) 243 Fed. 423. It need not be alleged that a person procured to refuse to register was a citizen of the United

States. *Ruthenberg v. U. S.*, (1918) 245 U.S. 480, 38 S. Ct. 168, 62 U.S. (L. ed.) —

In *U. S. v. Baker*, (D. C. Md. 1917) 247 Fed. 124, the language shown was held to be insufficient to constitute the offense of attempting to induce a violation of the Conscription Law.

An indictment alleging conspiracy to procure persons to refuse to register, and unnecessarily averring that a person was thereby induced so to refuse charges but one offense. *Ruthenberg v. U. S.*, (1918) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L. ed.) —.

An indictment charging in one count that the defendant, being subject to registration, made certain conveyances of property, and thereafter obtained exemption upon his affidavit that his wife was dependent upon him for support, and that he thereby evaded the requirements of the act, and another count charging that said affidavit constituted a false statement and certificate as to his fitness and liability for military service, was held sufficient as to both counts. *U. S. v. Miller*, (S. D. Fla. 1918) 249 Fed. 985.

Evidence.—In a prosecution for failure to register the baptismal record of the accused and the testimony of a priest as to the tenets of his church respecting the necessity of infant baptism are admissible to show the age of the accused. *Phelan v. U. S.*, (C. C. A. 9th Cir. 1918) 249 Fed. 43.

In *Breitmayer v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 929, a conviction for violating section 5 of this Act by refusing to present himself for or submit to registration was affirmed upon evidence held sufficient to prove the corpus delicti in respect of the elements of age and failure to register, and that defendant was not a member of the National Guard in the service of the United States.

Selling intoxicating liquor to soldier in uniform.—An indictment for such violation of section 12 of this Act need not negative what the court termed the "exceptions in nubibus" in the clause "except as herein provided." *Young v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 935, affirming a judgment of conviction.

SEC. 2. [Enlisted men — how obtained — volunteer enlistment — selective draft — citizens of neutral countries.] That the enlisted men required to raise and maintain the organizations of the Regular Army and to complete and maintain the organizations embodying the members of the National Guard drafted into the service of the United States, at the maximum legal strength as by this Act provided, shall be raised by voluntary enlistment or if and whenever the President decides that they can not effectually be so raised or maintained, then by selective draft; and all other forces hereby authorized, except as provided in the seventh paragraph of section one, shall be raised and maintained by selective draft exclusively; but this provision shall not prevent the transfer to any force of training cadres from other forces.

That such draft as herein provided shall be based upon liability to military service of all male citizens or male persons not alien enemies who have declared their intention to become citizens between the ages of twenty-one and thirty years, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act: *Provided*, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States.

Quotas for the several States, Territories, and the District of Columbia, or subdivisions thereof, shall be determined in proportion to the population thereof, and credit shall be given to any State, Territory, District, or subdivision thereof, for the number of men who were in the military service

of the United States as members of the National Guard on April first, nineteen hundred and seventeen, or who have since said date entered the military service of the United States from any such State, Territory, District, or subdivision, either as members of the Regular Army or the National Guard. All persons drafted into the service of the United States and all officers accepting commissions in the forces herein provided for shall, from the date of said draft or acceptance, be subject to the laws and regulations governing the Regular Army, except as to promotions, so far as such laws and regulations are applicable to persons whose permanent retention in the military service on the active or retired list is not contemplated by existing law, and those drafted shall be required to serve for the period of the existing emergency unless sooner discharged. *Provided*, That the President is authorized to raise and maintain by voluntary enlistment or draft, as herein provided, special and technical troops as he may deem necessary, and to embody them into organizations and to officer them as provided in the third paragraph of section one and section nine of this Act. Organizations of the forces herein provided for, except the Regular Army and the divisions authorized in the seventh paragraph of section one, shall, as far as the interests of the service permit, be composed of men who come, and of officers who are appointed from, the same State or locality. [40 Stat. L. 77, as amended by 40 Stat. L. —.]

The second sentence of this section was amended to read as here given by the Act of July 9, 1918, ch. 12, § 4. The amendment consisted in adding the proviso.

Annotations.—See the notes to the preceding section 1 of this Act, *supra*, p. 1010.

SEC. 3. [Bounties — substitutes.] No bounty shall be paid to induce any person to enlist in the military service of the United States; and no person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or to be discharged therefrom prior to the expiration of his term of service by the payment of money or any other valuable thing whatsoever as consideration for his release from military service or liability thereto. [40 Stat. L. 78.]

Annotations.—See the notes to the preceding section 1 of this Act, *supra*, p. 1010.

SEC. 4. [Selective draft — methods employed — exemptions — local and district boards.] That the Vice President of the United States, the officers, legislative, executive, and judicial, of the United States and of the several States, Territories, and the District of Columbia, regular or duly ordained ministers of religion, students who at the time of the approval of this Act are preparing for the ministry in recognized theological or divinity schools, and all persons in the military and naval service of the United States shall be exempt from the selective draft herein prescribed; and nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of

said religious organizations, but no person so exempted shall be exempted from service in any capacity that the President shall declare to be non-combatant; and the President is hereby authorized to exclude or discharge from said selective draft and from the draft under the second paragraph of section one hereof, or to draft for partial military service only from those liable to draft as in this Act provided, persons of the following classes: County and municipal officials; custom-house clerks; persons employed by the United States in the transmission of the mails; artificers and workmen employed in the armories, arsenals, and navy yards of the United States, and such other persons employed in the service of the United States as the President may designate; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States; persons engaged in industries, including agriculture, found to be necessary to the maintenance of the Military Establishment or the effective operation of the military forces or the maintenance of national interest during the emergency; those in a status with respect to persons dependent upon them for support which renders their exclusion or discharge advisable; and those found to be physically or morally deficient. No exemption or exclusion shall continue when a cause therefor no longer exists: *Provided*, That notwithstanding the exemptions enumerated, herein, each State, Territory, and the District of Columbia shall be required to supply its quota in the proportion that its population bears to the total population of the United States.

The President is hereby authorized, in his discretion, to create and establish throughout the several States and subdivisions thereof and in the Territories and the District of Columbia local boards, and where, in his discretion, practicable and desirable, there shall be created and established one such local board in each county or similar subdivision in each State, and one for approximately each thirty thousand of population in each city of thirty thousand population or over, according to the last census taken or estimates furnished by the Bureau of Census of the Department of Commerce. Such boards shall be appointed by the President, and shall consist of three or more members, none of whom shall be connected with the Military Establishment, to be chosen from among the local authorities of such subdivisions or from other citizens residing in the subdivision or area in which the respective boards will have jurisdiction under the rules and regulations prescribed by the President. Such boards shall have power within their respective jurisdictions to hear and determine, subject to review as hereinafter provided, all questions of exemption under this Act, and all questions of or claims for including or discharging individuals or classes of individuals from the selective draft, which shall be made under rules and regulations prescribed by the President, except any and every question or claim, for including or excluding or discharging persons or classes of persons from the selective draft under the provisions of this Act authorizing the President to exclude or discharge from the selective draft "Persons engaged in industries, including agriculture, found to be necessary to the maintenance of the Military Establishment, or the effective operation of the military forces, or the maintenance of national interest during the emergency."

The President is hereby authorized to establish additional boards, one in each Federal judicial district of the United States, consisting of such

number of citizens, not connected with the Military Establishment, as the President may determine, who shall be appointed by the President. The President is hereby authorized, in his discretion, to establish more than one such board in any Federal judicial district of the United States, or to establish one such board having jurisdiction of an area extending into more than one Federal judicial district.

Such district boards shall review on appeal and affirm, modify, or reverse any decision of any local board having jurisdiction in the area in which any such district board has jurisdiction under the rules and regulations prescribed by the President. Such district boards shall have exclusive original jurisdiction within their respective areas to hear and determine all questions or claims for including or excluding or discharging persons or classes of persons from the selective draft, under the provisions of this Act, not included within the original jurisdiction of such local boards.

The decisions of such district boards shall be final except that, in accordance with such rules and regulations as the President may prescribe, he may affirm, modify, or reverse any such decision.

Any vacancy in any such local board or district board shall be filled by the President, and any member of any such local board or district board may be removed and another appointed in his place by the President, whenever he considers that the interest of the nation demands it.

The President shall make rules and regulations governing the organization and procedure of such local boards and district boards, and providing for and governing appeals from such local boards to such district boards, and reviews of the decisions of any local board by the district board having jurisdiction, and determining and prescribing the several areas in which the respective local boards and district boards shall have jurisdiction, and all other rules and regulations necessary to carry out the terms and provisions of this section, and shall provide for the issuance of certificates of exemption, or partial or limited exemptions, and for a system to exclude and discharge individuals from selective draft. [40 Stat. L. 78.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

Regulations promulgated by the President under this section have the force of law, and the courts take judicial cogni-

zance of them. U. S. v. Miller, (S. D. Fla. 1918) 249 Fed. 985.

SEC. 5. [Selective draft — registration — failure or refusal to register — penalty — absentees.] That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation by the President or other public notice given by him or by his direction stating the time and place of such registration it shall be the duty of all persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this Act; and every such person shall be deemed to have notice of the requirements of this Act upon the publication of said proclamation or other notice as aforesaid given by the President or by his direction; and any person who shall willfully fail or refuse

to present himself for registration or to submit thereto as herein provided, shall be guilty of a misdemeanor and shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, and shall thereupon be duly registered: *Provided*, That in the call of the docket precedence shall be given, in courts trying the same, to the trial of criminal proceedings under this Act: *Provided further*, That persons shall be subject to registration as herein provided who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day set for the registration, and all persons so registered shall be and remain subject to draft into the forces hereby authorized, unless exempted or excused therefrom as in this Act provided: *Provided further*, That in the case of temporary absence from actual place of legal residence of any person liable to registration as provided herein such registration may be made by mail under regulations to be prescribed by the President. [40 Stat. L. 80.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 6. [Execution of Act — violations — punishment.] That the President is hereby authorized to utilize the service of any or all departments and any or all officers or agents of the United States and of the several States, Territories, and the District of Columbia, and subdivisions thereof, in the execution of this Act, and all officers and agents of the United States and of the several States, Territories, and subdivisions thereof, and of the District of Columbia, and all persons designated or appointed under regulations prescribed by the President whether such appointments are made by the President himself or by the governor or other officer of any State or Territory to perform any duty in the execution of this Act, are hereby required to perform such duty as the President shall order or direct, and all such officers and agents and persons so designated or appointed shall hereby have full authority for all acts done by them in the execution of this Act by the direction of the President. Correspondence in the execution of this Act may be carried in penalty envelopes bearing the frank of the War Department. Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunto who shall fail or neglect to perform such duty; and any person charged with such duty or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make or be a party to the making of any false or incorrect registration, physical examination, exemption, enlistment, enrollment, or muster; and any person who shall make or be a party to the making of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of this Act, or regulations made by the President thereunder, or otherwise evades or aids another to evade the requirements of this Act or of said regulations, or who, in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-

martial and suffer such punishment as a court-martial may direct. [40 Stat. L. 80.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 7. [Voluntary enlistments — qualifications and conditions — staff corps — discharge of enlisted men.] That the qualifications and conditions for voluntary enlistment as herein provided shall be the same as those prescribed by existing law for enlistments in the Regular Army, except that recruits for service in the staff corps and departments may be accepted who are between the ages of forty-one and fifty-five years, both inclusive, at the time of their enlistment, and that all other recruits must be between the ages of eighteen and forty years, both inclusive, at the time of their enlistment; and such enlistment shall be for the period of the existing emergency unless sooner discharged. All enlistments, including those in the Regular Army Reserve, which are in force on the date of the approval of this Act and which would terminate during the emergency shall continue in force during the emergency unless sooner discharged; but nothing herein contained shall be construed to shorten the period of any existing enlistment: *Provided*, That all persons enlisted or drafted under any of the provisions of this Act shall as far as practicable be grouped into units by States and the political subdivisions of the same: *Provided further*, That all persons who have enlisted since April first, nineteen hundred and seventeen, either in the Regular Army or in the National Guard, and all persons who have enlisted in the National Guard since June third, nineteen hundred and sixteen, upon their application, shall be discharged upon the termination of the existing emergency.

The President may provide for the discharge of any or all enlisted men whose status with respect to dependents renders such discharge advisable; and he may also authorize the employment on any active duty or retired enlisted men of the Regular Army, either with their rank, on the retired list or in higher enlisted grades, and such retired enlisted men shall receive the full pay and allowances of the grades in which they are actively employed. [40 Stat. L. 81, as amended by 40 Stat. L. —.]

The first sentence of this section was amended to read as here given by the Act of July 9, 1918, ch. 13. The first sentence formerly read as follows: "That the qualifications and conditions for voluntary enlistment as herein provided shall be the same as those prescribed by existing law for enlistments in the Regular Army, except that recruits must be between the ages of eighteen and forty years, both inclusive, at the time of their enlistment; and such enlistments shall be for the period of the emergency unless sooner discharged."

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 8. [General officers — appointment — grades.] That the President, by and with the advice and consent of the Senate, is authorized to appoint for the period of the existing emergency such general officers of appropriate grades as may be necessary for duty with brigades, divisions, and higher units in which the forces provided for herein may be organized by the President, and general officers of appropriate grade for the several Coast Artillery districts. In so far as such appointments may be made from any of the forces herein provided for, the appointees may be selected irrespective of the grades held by them in such forces. Vacancies in the

grades of the Regular Army resulting from the appointment of officers thereof to higher grades in the forces other than the Regular Army herein provided for shall be filled by temporary promotions and appointments in the manner prescribed by section one hundred and fourteen of the national defense Act, approved June third, nineteen hundred and sixteen, except that such promotions and appointments may be made by the President alone when such vacancies are in grades not above that of colonel; and officers appointed under the provisions of this Act to higher grades in the forces other than the Regular Army herein provided for shall not vacate their permanent commissions or be prejudiced in their relative or lineal standing in the Regular Army. [40 Stat. L. 81, as amended by 40 Stat. L. —.]

The last sentence of this section 8 was amended to read as given in the text by an Act of April 20, 1918, ch. —, entitled "An Act To amend section eight of an Act entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen."

As originally enacted it was as follows: "Vacancies in all grades in the Regular Army resulting from the appointment of officers thereof to higher grades in the forces other than the Regular Army herein provided for shall be filled by temporary promotions and appointments in the manner prescribed for filling temporary vacancies by section one hundred and fourteen of the national defense Act approved June third, nineteen hundred and sixteen; and officers appointed under the provisions of this Act to higher grades in the forces other than the Regular Army herein provided for shall not vacate their permanent commissions nor be prejudiced in their relative or lineal standing in the Regular Army."

This section is construed by the Act of Oct. 6, 1917, ch. 105, 40 Stat. L. 410, § 3, set out *infra*, p. 1033.

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 9. [Period of appointments — authority of President to discharge officers — military boards — duties.] That the appointments authorized and made as provided by the second, third, fourth, fifth, sixth, and seventh paragraphs of section one and by section eight of this Act, and the temporary appointments in the Regular Army authorized by the first paragraph of section one of this Act, shall be for the period of the emergency, unless sooner terminated by discharge or otherwise. The President is hereby authorized to discharge any officer from the office held by him under such appointment for any cause which, in the judgment of the President, would promote the public service; and the general commanding any division and higher tactical organization or territorial department is authorized to appoint from time to time military boards of not less than three nor more than five officers of the forces herein provided for to examine into and report upon the capacity, qualification, conduct, and efficiency of any commissioned officer within his command other than officers of the Regular Army holding permanent or provisional commissions therein. Each member of such board shall be superior in rank to the officer whose qualifications are to be inquired into, and if the report of such board be adverse to the continuance of any such officer and be approved by the President, such officer shall be discharged from the service at the discretion of the President with one month's pay and allowances. [40 Stat. L. 82.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 10. [Officers and enlisted men — pay, allowances and pensions.] That all officers and enlisted men of the forces herein provided for other than the Regular Army shall be in all respects on the same footing as to pay, allowances, and pensions as officers and enlisted men of corresponding grades and length of service in the Regular Army; and commencing June one, nineteen hundred and seventeen, and continuing until the termination of the emergency, all enlisted men of the Army of the United States in active service whose base pay does not exceed \$21 per month shall receive an increase of \$15 per month; those whose base pay is \$24, an increase of \$12 per month; those whose base pay is \$30, \$36, or \$40, an increase of \$8 per month; and those whose base pay is \$45 or more, an increase of \$6 per month: *Provided*, That the increases of pay herein authorized shall not enter into the computation of continuous service pay. [40 Stat. L. 82.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 11. [Restrictions upon detail, detachment and employment — suspension.] That all existing restrictions upon the detail, detachment, and employment of officers and enlisted men of the Regular Army are hereby suspended for the period of the present emergency. [40 Stat. L. 82.]

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 12. [Alcoholic liquors — prohibition of sale.] That the President of the United States, as Commander in Chief of the Army, is authorized to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the Army as he may from time to time deem necessary or advisable: *Provided*, That no person, corporation, partnership, or association shall sell, supply, or have in his or its possession any intoxicating or spirituous liquors at any military station, cantonment, camp, fort, post, officers' or enlisted men's club, which is being used at the time for military purposes under this Act, but the Secretary of War may make regulations permitting the sale and use of intoxicating liquors for medicinal purposes. It shall be unlawful to sell any intoxicating liquor, including beer, ale, or wine, to any officer or member of the military forces while in uniform, except as herein provided. Any person, corporation, partnership, or association violating the provisions of this section or the regulations made thereunder shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both. [40 Stat. L. 82.]

The sale, etc., of beer, wine or any intoxicating liquors in any post, exchange, cantonment, army transport, or any premises used for military purposes by the United States, was prohibited by the Act of Feb. 2, 1901, ch. 192, § 38, 7 Fed. Stat. Ann. 975.

The provisions of this and the following section 13 were construed by the Act of Oct. 6, 1917, ch. 92, *infra*, p. 1032.

Annotations.— See the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 13. [Prohibiting prostitution near encampments.] That during the present emergency it shall be unlawful, within such reasonable distance of any military camp, station, fort, post, cantonment, training or mobilization place as the Secretary of War shall determine to be needful to the

efficiency and welfare of the Army, and shall designate and publish in general orders or bulletins, to engage in prostitution or to aid or abet prostitution or to procure or solicit for purposes of prostitution, or to keep or set up a house of ill fame, brothel, or bawdy house, or to receive any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure, or building, or to permit any person to remain for purposes of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building; and any person, corporation, partnership, or association violating the provisions of this chapter shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment, and any person subject to military law violating this chapter shall be punished as provided by the Articles of War; and the Secretary of War is hereby authorized, empowered, and directed to do everything by him deemed necessary to suppress and prevent violation thereof. [40 Stat. L. 83, as amended by 40 Stat. L. —.]

This section was amended to read as here given by the Act of July 9, 1918, ch. xiv. Before the amendment it read as follows:

"That the Secretary of War is hereby authorized, empowered, and directed during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training, or mobilization place, and any person, corporation, partnership, or association receiving or permitting to be received for immoral purposes any persons into any place, structure, or building used for the purpose of lewdness, assignation, or prostitution within such distance of said places as may be designated, or shall permit any such person to remain for immoral purposes in any such place, structure, or building as aforesaid, or who shall violate any order, rule, or regulation issued to carry out the object and purpose of this section shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000, or imprisonment for not more than twelve months, or both."

The provisions of this and the preceding section 12 of this Act were construed by the Act of Oct. 6, 1917, ch. 92, *infra*, p. 1032.

Power of Secretary of War.—The power of the Secretary of War to define zones near military camps within which it is a criminal offense to maintain a house of prostitution has been sustained. *U. S. v.*

Casey, (S. D. Ohio 1918) 247 Fed. 362; *U. S. v. Scott*, (D. C. R. I. 1918) 248 Fed. 361. See generally the notes to section 1 of this Act, *supra*, p. 1010.

SEC. 14. [Repeal of conflicting laws.] That all laws and parts of laws in conflict with the provisions of this Act are hereby suspended during the period of this emergency. [40 Stat. L. 83.]

An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of June 15, 1917, ch. 29, 40 Stat. L. 196.]

[SEC. 1.] [Motor ambulances — purchase — advertisements.] * * * That the Secretary of War may in his discretion select types and makes of motor ambulances for the Army and authorize their purchase without

regard to the laws prescribing advertisement for proposals for supplies and material for the Army; * * * [40 Stat. L. 196.]

SEC. 4. [Enlisted men — period of service.] That the service of all persons selected by draft and all enlistments under the provisions of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, shall be for the period of the war, unless sooner terminated by discharge or otherwise. Whenever said war shall cease by the conclusion of peace between the United States and its enemies in the present war, the President shall so declare by a public proclamation to that effect, and within four months after the date of said proclamation or as soon thereafter as it may be practicable to transport the forces then serving without the United States to their home station, the provisions of said Act, in so far as they authorize compulsory service by selective draft or otherwise, shall cease to be of force and effect. [40 Stat. L. 217.]

Joint Resolution Relating to the service of certain retired officers of the Army.

[Joint Resolution of June 15, 1917, ch. 31, 40 Stat. L. 231.]

[Retired officers — Corps of Engineers — active service — position.] That when retired officers of the Army, any portion of whose active service was in the Corps of Engineers, are called back into active service they shall be eligible to fill any position required by law to be filled by an officer of the Corps of Engineers. [40 Stat. L. 231.]

An Act To authorize the President to increase temporarily the Signal Corps of the Army and to purchase, manufacture, maintain, repair, and operate airships, and to make appropriations therefor, and for other purposes.

[Act of July 24, 1917, ch. 40, 40 Stat. L. 243.]

[SEC. 1.] [Signal Corps including Aviation Section — temporary increase.] That for and during the existing emergency, the President be, and is hereby, authorized to increase the present authorized commissioned and enlisted strength of the Signal Corps of the Army, including the Aviation Section thereof. [40 Stat. L. 243.]

SEC. 2. [Commissioned personnel.] That to provide the additional commissioned personnel required by this Act the President is authorized to promote, appoint, detail, or attach as temporary officers in the Signal Corps, including the Aviation Section thereof, officers of the Regular Army, National Army, or National Guard, or the Officers' Reserve Corps, or to appoint temporarily enlisted men of the Regular Army, enlisted men of the

Enlisted Reserve Corps, or persons from civil life: *Provided*, That no person shall be so promoted, appointed, detailed, or detached until he shall have been found physically, mentally, and morally qualified under regulations prescribed by the Secretary of War: *Provided further*, That officers with rank not above colonel shall be appointed and commissioned by the President alone, irrespective of the rank or grade held by them on the date of the passage of this Act, and that officers above the grade of colonel shall be appointed by the President, by and with the advice and consent of the Senate, irrespective of the rank or grade held by them on the date of the passage of this Act. [40 Stat. L. 243.]

SEC. 3. [Enlisted men — chauffeurs.] That to provide the additional enlisted men required by this Act, the President is authorized to raise and maintain, by voluntary enlistment or by draft, such number of enlisted men as he may deem necessary and to embody them into organizations hereinafter provided for in section four: *Provided*, That the draft herein provided for shall not apply to any person under the age of twenty-one years or to any person above the age of thirty-one years: *Provided further*, That the grades of chauffeur, first class, and chauffeur are hereby created in the Signal Corps. The pay and allowances of a chauffeur, first class, shall be the same as a sergeant, first class, in the Signal Corps. Pay and allowances of a chauffeur shall be the same as a sergeant in the Signal Corps. All chauffeurs while serving as such shall rank with corporals of the Signal Corps and shall be subject to promotion and reduction to any other grade now authorized in the Signal Corps. [40 Stat. L. 243.]

SEC. 4. [Organization into divisions, etc.] That the President is hereby authorized to appropriately officer and organize the personnel of the Signal Corps into such number of divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as may be necessary, and to increase or decrease the number of organizations prescribed for the divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights, and to prescribe such new and different organizations and personnel for divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as the efficiency of the service may require.

The President is further authorized to organize such headquarters and headquarters detachments for divisions, brigades, regiments, wings, squadrons, battalions, companies, and flights as may be necessary, and to prescribe new and different organizations for such headquarters and headquarters detachments whenever the efficiency of the service may require. [40 Stat. L. 244.]

SEC. 5. [General officers — appointments — vacancies.] That the President, by and with the advice and consent of the Senate, is authorized to appoint for the period of the existing emergency such general officers of appropriate grades as may be necessary for staff duty and for duty with such brigades and divisions of the troops of the Signal Corps, including the Aviation Section thereof, as may be organized by the President.

Vacancies in all grades of the Regular Army, National Army, or National Guard resulting from the temporary appointment of officers thereof to

higher grades shall be filled or vacated as provided for in sections eight and nine of the Act authorizing the President to increase temporarily the military establishment of the United States and approved May eighteen, nineteen hundred and seventeen. [40 Stat. L. 244.]

The Act of May 18, 1917, ch. 15, §§ 8, 9, is set out *supra*, p. 1020.

SEC. 6. [Officers of aviation section — rating — pay.] That officers detailed in or attached to the aviation section of the Signals Corps may, when qualified therefor, be rated as junior military aviators, military aviators, junior military aeronauts, and military aeronauts, but no person shall be so rated until there shall have been issued to him a certificate to the effect that he is qualified for the rating, and no certificate shall be issued to any person until an examining board, which shall be composed of two officers of experience of the aviation section of the Signal Corps and one medical officer, shall have examined him under general regulations to be prescribed by the Secretary of War and published to the Army by the War Department, and shall have reported him to be qualified for the rating. No person shall receive the rating of military aviator or military aeronaut until he shall have served creditably for three years as an aviation officer with the rating of a junior military aviator or the rating of a junior military aeronaut, except that in time of war any officer or enlisted man who specially distinguishes himself in active service may, upon recommendation of the Chief Signal Officer of the Army, be rated as a junior military aviator, military aviator, junior military aeronaut, or military aeronaut without regard to examination or to length of service: *Provided*, That junior military aeronauts and military aeronauts shall be entitled to the same increase in rank and pay as are now authorized by law for junior military aviators and military aviators respectively: *Provided further*, That any officer attached to the aviation section of the Signal Corps for any military duty requiring him to make regular and frequent flights shall receive an increase of twenty-five per centum of the pay of his grade and length of service under his commission. [40 Stat. L. 244.]

SEC. 7. [Enlisted men of aviation section — rating — pay.] That the Secretary of War is authorized from time to time to cause such number of the enlisted men of the aviation section of the Signal Corps above the grade of corporal as he may deem necessary to be rated as aviation mechanics or as balloon mechanics in the manner now prescribed by law: *Provided*, That balloon mechanics shall receive the same increase of pay as now prescribed by law for aviation mechanics. [40 Stat. L. 245.]

SEC. 8. [Pay, allowances and pensions generally.—no decrease of authorized strength of army.] That all officers and enlisted men of the temporary forces of the Signal Corps, including the aviation section thereof provided for herein, shall be in all respects on the same footing as to pay, allowances, and pensions as permanent officers and enlisted men of the corresponding grades and length of service in the Regular Army.

Provided, That nothing in this Act shall operate to decrease the present authorized strength of the Regular Army or National Army heretofore authorized by law. [40 Stat. L. 245.]

SEC. 9. [Purchases and expenses — authority of President.] That during the existing emergency authority is hereby given to the President, through the War Department, for the purchase, manufacture, maintenance, repair, and operation of airships and other aerial machines, including instruments and appliances of every sort and description necessary for the operation, construction, or equipment of all types of aircraft, including guns, armament, ammunition, and all necessary spare parts, and equipment connected therewith; and all necessary buildings for equipment and personnel in the Aviation Section and for the purchase, maintenance, repair, and operation, through the Chief Signal Officer of the Army, of all motor-propelled passenger and equipment carrying vehicles which may be necessary for the Aviation Section of the Signal Corps.

And during the existing emergency authority is hereby further given for the establishment, equipment, maintenance, and operation of aviation stations, including (a) the acquisition of land, or any interest in land, with any buildings and improvements thereon, by purchase, lease, donation, condemnation, or otherwise: *Provided*, That by order of the President any unappropriated or reserved public lands may be reserved from entry, designated, and used for such aviation stations; (b) the improvement of such land by clearing, grading, draining, seeding, and otherwise making the same suitable for the purpose intended; (c) the construction, maintenance, and repair of permanent or temporary barracks, quarters, hospitals, mess houses, administration, instructional and recreational buildings, hangars, magazines, storehouses, sheds, shops, garages, boathouses, docks, radio stations, laboratories, observation stations, and all other buildings, and structures necessary or advisable; (d) procuring and introducing water, electric light and power, telephones, telegraph, and sewerage to aviation stations and buildings and structures thereon by the extension of existing systems or the creation of new systems and their maintenance, operation and repair, installation of plumbing, electric fixtures and telephones, fire apparatus and fire alarm systems and the maintenance, operation and repair of all such systems, fixtures and apparatus; (e) construction and repair of roads, walks, sea walls, breakwaters, bridges, and wharves, dredging, filling and otherwise improving land and water sites; (f) purchase of stoves and other cooking and heating apparatus, kitchen and tableware, and furniture and equipment for kitchens, mess halls, offices, quarters, barracks, hospitals, and other buildings, screens, lockers, refrigerators, and all other necessary equipment; (g) purchase of gasoline, oil, fuel, and all supplies of every kind and character necessary or advisable for maintenance and operation of aviation stations, including electric light and power, telephones, water supply and sewerage service; (h) purchase and manufacture and installation of all kinds of machinery, tools, material, supplies, and equipment for construction, maintenance, and repair of aircraft, buildings, and improvements at aviation stations, or property or appliances used in connection with aviation.

And also for the purchase or manufacture and issue of special clothing, wearing apparel, and similar equipment for aviation purposes.

And also for the actual and necessary expenses of officers, enlisted men, and civilian employees of the Army and authorized agents sent on special duty at home and abroad for aviation purposes, including observation and

investigation of foreign military operations and organization, manufacture of aircraft, and engines, also special courses in foreign aviation schools and manufacturing establishments, to be paid upon certificates of the Secretary of War certifying that the expenditures were necessary for military purposes.

And also for vocational training, including employment of necessary civilian instructors in important trades related to aviation, purchase of tools, equipment, materials, and machines required for such training, purchase of textbooks, books of reference, scientific and professional papers, periodicals and magazines, and instruments and material for theoretical and practical instruction at aviation schools and stations, and all other means to carry out the provisions of section twenty-seven of the Act approved June third, nineteen hundred and sixteen, authorizing, in addition to the military training of soldiers while in active service, means for securing educational and vocational training of a character to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations.

And also to pay and otherwise provide for such officers of the Officers' Reserve Corps of the Aviation Section of the Signal Corps and such enlisted men of the Enlisted Reserve Corps of the Aviation Section of the Signal Corps as may be called into active service and such enlisted men as may be enlisted in the Aviation Section of the Signal Corps under the provisions of section two of the Act to increase temporarily the military establishment of the United States, approved May eighteenth, nineteen hundred and seventeen, or any subsequent Act temporarily increasing the commissioned or enlisted personnel of the Aviation Section of the Signal Corps and such civilian employees as may be necessary, for the payment of their traveling and other necessary expenses when not traveling with troops: *Provided*, That hereafter all reserve officers and enlisted men of the Aviation Section of the Signal Corps shall be paid by Quartermaster Corps disbursing officers from funds transferred to their credit from Signal Corps appropriations.

And also for the payment of all expenses in connection with the development of suitable types of aviation engines, airplanes, and other aircraft appurtenances, including the cost of sample engines, airplanes, and appurtenances, cost of any patents and other rights therein, and costs of investigation, experimentation, and research in respect thereto.

And also for the payment of all expenses in connection with the creation, expansion, acquisition, and development of plants, factories, and establishments for the manufacture of airplanes, aircraft, engines, and appurtenances, including provision for the purchase or lease of land with the buildings thereon, construction of permanent or temporary buildings for all purposes, purchase of machinery, tools, and employment of operatives, together with all administrative expenses necessary, the purchase and supply of raw and semifinished materials and of fuel and all other things necessary for creating and extending the production of airplanes, aircraft, engines, and all appurtenances.

And also for creating, maintaining, and operating at technical schools and colleges courses of instruction for aviation students, including cost of

instruction, equipment, and supplies necessary for instruction and subsistence of students while receiving such instruction.

Provided, That, subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, and appurtenances may be exchanged in part payment for new equipment of the same or similar character to be used for the same purpose as those proposed to be exchanged.

Provided further, That during the present emergency, officers and enlisted men in foreign armies attached to the Aviation Section of the Signal Corps as instructors or inspectors when traveling in the United States on official business pertaining to the Aviation Section of the Signal Corps shall be authorized, from funds appropriated by this Act, the same mileage and transportation allowances as are authorized for officers or enlisted men of the Regular Army. [40 Stat. L. 245.]

For Act of June 3, 1916, § 27, see *supra*, p. 947.

For Act of May 18, 1917, § 2, see *supra*, p. 1015.

SEC. 10. [Appropriation for carrying Act into effect.] That for the purpose of carrying this Act into effect the sum of \$640,000,000 is hereby appropriated out of any funds in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen. [40 Stat. L. 247.]

An Act Making further provision for the allotment of pay of officers, enlisted men, and civilian employees of the Army, and for other purposes.

[Act of Oct. 6, 1917, ch. 81, 40 Stat. L. 384.]

[Allotments of pay.] That section sixteen of the Act of Congress approved March second, eighteen hundred and ninety-nine, entitled "An Act for increasing the efficiency of the Army of the United States, and for other purposes," as amended by the Act of March second, nineteen hundred and one, be, and the same is hereby, amended as follows:

"The Secretary of War is hereby authorized to permit, under such regulation as he may prescribe, any officer or enlisted man on the active list of the Army, any retired officer or enlisted man of the Army on active duty, and any permanent civilian employee under the jurisdiction of the War Department on duty outside of the continental limits of the United States, to make allotments of his pay for the support of his wife, children, or dependent relatives, or for such other purposes as the Secretary of War may deem proper. All allotments of pay of officers, enlisted men, and civilian employees that have been or shall be paid to designated allottees previous to the receipt by disbursing officer of notice of discontinuance of the same from the officer required by regulations to furnish such notice shall pass to the credit of the disbursing officer who has made or shall make such payments; and, if erroneous payment is made because of the failure of an officer to report, in the manner prescribed by the Secretary of War, the death of the grantor, or any fact which renders the allotment not payable, then the amount of such erroneous payment shall be collected by the

Quartermaster General from the officer who fails to make such report, if such collection is practicable. Nothing herein shall be construed to invalidate allotments now in force. [40 Stat. L. 384.]

For Act of March 2, 1891, section 16, as amended by Act of March 2, 1901, see 7 Fed. Stat. Ann. 1059.

An Act Authorizing appointment of chaplains at large for the United States Army.

[Act of Oct. 6, 1917, ch. 94, 40 Stat. L. 394.]

[Chaplains — appointment at large.] That the President may appoint for service during the present emergency not exceeding twenty chaplains at large for the United States Army representing religious sects not recognized in the apportionment of chaplains now recognized by law: *Provided*, That no person shall be eligible to such appointment unless he be at the time of his appointment a citizen of the United States. [40 Stat. L. 394.]

An Act To provide for the promotion of first lieutenants in the Regular Army and National Guard to the grade of captain, and respecting the Dental Corps of the Army and medical and dental students, and for other purposes.

[Act of Oct. 6, 1917, ch. 101, 40 Stat. L. 397.]

[Medical Corps — promotions — Dental Corps — officers — medical students.] That during the existing emergency first lieutenants in the Medical Corps of the Regular Army and of the National Guard shall be eligible to promotion as captain upon such examination as may be prescribed by the Secretary of War.

Hereafter the Dental Corps of the Army shall consist of commissioned officers of the same grade and proportionally distributed among such grades as are now or may be hereafter provided by law for the Medical Corps, who shall have the rank, pay, promotion and allowances of officers of corresponding grades in the Medical Corps, including the right to retirement as in the case of other officers, and there shall be one dental officer for every thousand of the total strength of the Regular Army authorized from time to time by law: *Provided further*, That dental examining and review boards shall consist of one officer of the Medical Corps and two officers of the Dental Corps: *Provided further*, That immediately following the approval of this Act all dental surgeons then in active service shall be recommissioned in the Dental Corps in the grades herein authorized in the order of their seniority and without loss of pay or allowances or of relative rank in the Army: *And provided further*, That no dental surgeon shall be recommissioned who has not been confirmed by the Senate.

All regulations concerning the enlistment of medical students in the Enlisted Reserve Corps and their continuance in their college course while subject to call to active service, shall apply similarly to dental students. [40 Stat. L. 397.]

An Act To authorize the President to organize provisionally as Field Artillery or Infantry and to use as Field Artillery or Infantry during the existing emergency such regiments of Cavalry as he may designate.

[*Act of Oct. 6, 1917, ch. 104, 40 Stat. L. 398.*]

[Cavalry — provisional organization as field artillery or infantry.] That during the present emergency the President be, and he is hereby, authorized to organize provisionally as Field Artillery or Infantry and to use as Field Artillery or Infantry during the existing emergency such regiments of Cavalry as he may designate: *Provided*, That immediately after the termination of the existing emergency such regiments shall be reorganized as Cavalry regiments in accordance with the prescribed organization of such regiments. [*40 Stat. L. 398.*]

An Act To authorize the issuance of Reserve Corps and National Army commissions in the lower grades of staff corps and to remove the fixed age limits requiring the discharge of Reserve Corps officers.

[*Act of Oct. 6, 1917, ch. 91, 40 Stat. L. 393.*]

[Officers' Reserve Corps — National Army — officers — appointment — discharge.] That during the existing emergency the President is authorized, in addition to the grades now authorized, to appoint in the Officers' Reserve Corps and the National Army in the grades of second and first lieutenant in the Quartermaster Corps; second lieutenant in the Ordnance Corps and Signal Corps; second lieutenant, first lieutenant, and captain in The Adjutant General's Department, such citizens as shall be found physically, mentally, and morally qualified for appointment.

During the existing emergency no member of the Officers' Reserve Corps shall be discharged by reason of reaching the age limits provided in section thirty-seven of the national defense Act approved June third, nineteen hundred and sixteen. [*40 Stat. L. 393.*]

For Act of June 3, 1916, § 37, see *supra*, p. 952.

[SEC. 1.] * * * **[Temporary employees — compensation.]** For the temporary employment of such additional force of clerks and other employees as in the judgment of the Secretary of War may be proper and necessary to the prompt, efficient, and accurate dispatch of official business in the War Department and its bureaus, to be allotted by the Secretary of War to such bureaus and offices as the exigencies of the existing situation may demand, \$4,261,232: *Provided*, That the Secretary of War shall submit to Congress on the first day of its next regular session a statement showing by bureaus or offices the number and designation of the persons employed hereunder and the annual rate of compensation paid to each: *Provided further*, That no more than thirty persons shall be employed hereunder at a rate of compensation in excess of \$1,800 per annum each and not exceeding \$2,400 per annum each. [*40 Stat. L. 351.*]

This and the following five paragraphs are from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. 79.

* * * **[Clerks, messengers and laborers — assignment to duty.]** *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau in the War Department. [40 Stat. L. 356.]

* * * **[Officers and enlisted men of foreign armies attached to United States Army — expenses, how met.]** The Secretary of War is hereby authorized, under such regulations and in such manner as he may prescribe, to employ such portion of the appropriations made for transportation of the Army and its supplies as in his judgment may be necessary to defray the expenses of travel incurred by officers and enlisted men of foreign armies attached to the Army of the United States during the present emergency, and that those officers and enlisted men, who may have been performing duties in this connection, be reimbursed from this appropriation for the expenditures they have already been obliged to make. [40 Stat. L. 361.]

* * * **[Quartermaster Corps — civilian employees — pay.]** That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [40 Stat. L. 363.]

* * * **[Ordnance and ordnance supplies and materials.]** The Secretary of War is authorized, during the present emergency and in addition to the appropriations and obligations specifically authorized by law, to incur obligations for ordnance and ordnance supplies and materials: *Provided*, That the aggregate amount of such obligations outstanding at any one time shall not exceed the sum of \$100,000,000. [40 Stat. L. 366.]

* * * **[Ordnance Department — moneys intrusted to officers — who responsible.]** During the present emergency, under such regulations as may be prescribed by the Secretary of War, officers of the Ordnance Department accountable for public moneys may intrust moneys to other officers for the purpose of having them make disbursements as their agents, and the officers to whom the money is intrusted, as well as the officers who intrust it to them, shall be held pecuniarily responsible therefor to the United States. [40 Stat. L. 367.]

An Act To promote the efficiency of the United States Navy.

[Act of Oct. 6, 1917, ch. 92, 40 Stat. L. 393.]

[Construction of Selective Draft Act.] That in construing the provisions of sections twelve and thirteen of the selective-draft Act approved May eighteenth, nineteen hundred and seventeen, the word "Army" shall extend to and include "Navy"; the word "military" shall include "naval"; "Article of War" shall include "Articles for the Government

of the Navy": the words "camps, station, cantonment, camp, fort, post, officers' or enlisted men's club," in section twelve, and "camp, station, fort, post, cantonment, training, or mobilization place," in section thirteen, shall include such places under naval jurisdiction as the President may prescribe, and the powers therein conferred upon the Secretary of War with regard to the military service are hereby conferred upon the Secretary of the Navy with regard to the naval service. [40 Stat. L. 393.]

For Act of May 18, 1917, §§ 12, 13, see *supra*, p. 1022.

SEC. 3. [Generals — appointment — pay of general and lieutenant general — rank of brigadier general — rank, pay, etc., of chief of staff corps, department or bureau.] That section eight of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, shall be held and construed to authorize the President, in accordance with the provisions of said Act and for the period of the existing emergency only, to appoint as generals the Chief of Staff and the commander of the United States forces in France and as lieutenant general each commander of an army or army corps organized as authorized by existing law: *Provided*, That the pay of the grades of general and lieutenant general shall be \$10,000 and \$9,000 a year, respectively, with allowances appropriate to said grades as determined by the Secretary of War: *And provided*, That brigadier generals of the Army shall hereafter rank relatively with rear admirals of the lower half of the grade. And, hereafter, the chief of any existing staff corps, department, or bureau, except as is otherwise provided for the Chief of Staff, shall have the rank, pay, and allowances of major general. [40 Stat. L. 410.]

This section is from the Act of Oct. 6, 1917, ch. 105, 40 Stat. L. 410, entitled "An Act to amend an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September second, nineteen hundred and fourteen, and for other purposes."

For the Act of May 18, 1917, § 8, mentioned in the text, see p. 1020.

An Act To authorize the Secretary of War to grant furloughs without pay and allowances to enlisted men of the Army of the United States.

[Act of March 16, 1918, ch. —, 40 Stat. L. —.]

[Furloughs — enlisted men.] That, whenever during the continuance of the present war in the opinion of the Secretary of War the interests of the service or the national security and defense render it necessary or desirable, the Secretary of War be, and he hereby is, authorized to grant furloughs to enlisted men of the Army of the United States with or without pay and allowances or with partial pay and allowances, and, for such periods as he may designate, to permit said enlisted men to engage in civil occupations and pursuits: *Provided*, That such furloughs shall be granted only upon the voluntary application of such enlisted men under regulations to be prescribed by the Secretary of War. [40 Stat. L. —.]

[SEC. 1.] * * * [Ordnance office — disbursing officer.] The Chief of Ordnance is authorized to appoint one of the Army officers serving in his office as disbursing officer to pay the civilian employees in the Ordnance Office authorized in this Act, the urgent deficiency appropriation Act approved October sixth, nineteen hundred and seventeen, and the legislative, executive, and judicial appropriation Act for the fiscal year nineteen hundred and eighteen. [40 Stat. L. —.]

This and the two paragraphs which follow are from the Deficiencies Appropriation Act of March 28, 1918.

* * * [Quartermaster Corps — civilian employees — number — salary.] That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [40 Stat. L. —.]

* * * [Claims of officers and enlisted men for loss of private property destroyed in the military service.] Property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, which they are required by law or regulations to own and use in field service in the performance of their duties, which since the fifth day of April, nineteen hundred and seventeen, has been, or shall hereafter be, lost, damaged, or destroyed in the military service, shall be replaced, or the damage thereto, or its value, recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur without fault or negligence on the part of the owner in any of the following circumstances:

First. When such private property so lost or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment, or destroyed by the enemy or by shipwreck.

Second. When it appears that such private property was so lost or destroyed in consequence of its owner having given his attention to the saving of property belonging to the United States which was in danger at the same time and in similar circumstances.

Third. When such private property is destroyed or captured by the enemy, or is destroyed to prevent its falling into the hands of the enemy, or is abandoned by reason of military emergency requiring its abandonment.

The Secretary of War is authorized and directed to examine into, ascertain, and determine the value of such property lost, destroyed, captured, or abandoned as specified in the foregoing paragraphs, or the amount of the damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid from appropriations made therefor, or such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, may be replaced in kind from Government property on hand by the supply officer or quartermaster of the organization to which the person entitled thereto belongs or with which he is serving upon the order of the commanding officer thereof.

Tender of replacement or the determination made by the Secretary of War upon a claim presented as provided for in the foregoing paragraphs

shall constitute a final determination of any claim cognizable under this Act, and such claim shall not thereafter be reopened or considered by any accounting officer or court of the United States.

No claim arising under this Act shall be considered unless made within one year from the time that it accrued, or presented within six months after peace is established.

For the payment of any awards hereunder there is appropriated the sum of \$200,000. [40 Stat. L. —.]

An Act To provide for restoration to their former grades of enlisted men discharged to accept commissions, and for other purposes.

[Act of March 30, 1918, ch. —, 40 Stat. L. —.]

Enlisted men accepting commissions — restoration to former grades on discharge — continuous service pay.] That any enlisted man of the Army of the United States who has heretofore been or shall hereafter be, discharged to accept a commission in any component part of the Army of the United States, and who shall tender himself for enlistment within three months after the termination of his commissioned service, shall, subject to such examination for enlistment as is provided by law or regulation, be accepted and be restored to the grade held by him before being discharged to accept such commission; and in computing service for retirement and continuous-service pay he shall be credited with all time served with the forces of the United States, and his service shall be deemed continuous, notwithstanding the interruption thereof by the changes of status provided for herein. [40 Stat. L. —.]

An Act To authorize the appointment of officers of the Philippine Scouts as officers in the militia or other locally created armed forces of the Philippine Islands drafted into the service of the United States, and for other purposes.

[Act of March 30, 1918, ch. —, 40 Stat. L. —.]

[SEC. 1.] **[Philippine Scouts — officers — commission in drafted forces.]** That officers of the Philippine Scouts be, and they hereby are, made eligible to appointment as officers in the militia or other locally created armed forces in the Philippine Islands which have been or shall hereafter be drafted into the service of the United States; and any such officer of the Philippine Scouts so appointed as an officer in said drafted forces shall not thereby vacate his commission in the Philippine Scouts, and in case his commission in said Philippine Scouts shall terminate while holding a commission in said drafted forces as aforesaid, he shall thereupon be eligible to reappointment as an officer of said Philippine Scouts notwithstanding his retention of a commission in said drafted forces. [40 Stat. L. —.]

SEC. 2. [Period of service — computation.] That in computing period of service for any purpose officers of the Philippine Scouts shall be credited

with all time served as commissioned officers in the drafted forces mentioned in section one of this Act. [40 Stat. L. —.]

An Act To amend an Act entitled “An Act providing for an Assistant Secretary of War,” approved March fifth, eighteen hundred and ninety, and for other purposes.

[Act of April 6, 1918, ch. —, 40 Stat. L. —.]

[Assistant secretaries — appointment — salaries — duties.] That an Act entitled “An Act providing for an Assistant Secretary of War,” approved March fifth, eighteen hundred and ninety (Twenty-sixth Statutes, page seventeen), be and the same hereby is, amended to read as follows:

“There shall be in the Department of War an Assistant Secretary, a Second Assistant Secretary, and a Third Assistant Secretary, each of whom shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be entitled to a salary of \$5,000 per annum, payable monthly, and the Second Assistant Secretary and Third Assistant Secretary shall each be entitled to a salary of \$4,500 per annum, payable monthly, and shall perform such duties in the Department of War as shall be prescribed by the Secretary or as may be required by law.” [40 Stat. L. —.]

For Act of March 5, 1890, see 7 Fed. Stat. Ann. 940.

An Act To provide quarters or commutation thereof to commissioned officers in certain cases.

[Act of April 16, 1918, ch. —, 40 Stat. L. —.]

[Commissioned officers — quarters and commutation.] That during the present emergency every commissioned officer of the Army of the United States on duty in the field, or on active duty without the territorial jurisdiction of the United States, who maintains a place of abode for a wife, child, or dependent parent, shall be furnished at the place where he maintains such place of abode, without regard to personal quarters furnished him elsewhere, the number of rooms prescribed by the Act of March second, nineteen hundred and seven (Thirty-fourth Statutes, page eleven hundred and sixty-nine), to be occupied by, and only so long as occupied by, said wife, child, or dependent parent; and in case such quarters are not available every such commissioned officer shall be paid commutation thereof and commutation for heat and light at the rate authorized by law in cases where public quarters are not available; but nothing in this Act shall be so construed as to reduce the allowances now authorized by law for any person in the Army. [40 Stat. L. —.]

For the Act of March 2, 1907, see 1909 Supp. Fed. Stat. Ann. 692.

An Act To suspend for the period of the present war sections forty-five, forty-six, and fifty-six of an Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, and for other purposes.

[*Act of April 17, 1918, ch. —, 40 Stat. L. —.*]

[**SEC. 1. [Act of June 3, 1916, suspended in part.]** That sections forty-five, forty-six, and fifty-six of an Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, be and they hereby are, suspended for and during the period of the present war, but for such period only, and that upon the termination of said war said suspension shall cease and terminate and said sections shall thereupon be and become reinstated and of the same force and effect as if this suspension had not been made. [*40 Stat. L. —.*]

For Act of June 3, 1916, see *supra*, p. 921.

SEC. 2. [Reserve Officers' Training Corps — instruction — detail of officers — pay and allowances.] That during the present war the President be, and he hereby is, authorized to detail such number of officers of the Army of the United States, either active or retired, not above the grade of colonel, as may be necessary for duty as professors and assistant professors of military science and tactics at institutions where one or more units of the Reserve Officers' Training Corps are maintained; but the total number of active officers so detailed at educational institutions shall not exceed one thousand, and no officer shall be so detailed who has not had at least one year's commissioned service in the Army of the United States. Retired officers below the grade of lieutenant colonel so detailed shall receive the full pay and allowances of their grade, and retired officers above the grade of major so detailed shall receive the same pay and allowances as a retired major would receive under like detail. [*40 Stat. L. —.*]

SEC. 3. [Reserve Officers' Training Corps — instruction — detail of enlisted men.] That during the present war the President be, and he hereby is, authorized to detail for duty at institutions where one or more units of the Reserve Officer's Training Corps are maintained such number of enlisted men, either active or retired, of the Army of the United States as he may deem necessary, but the active noncommissioned officers so detailed shall have had at least one year's active service, and the total number of such active noncommissioned officers so detailed shall not exceed three thousand, and shall be additional in their respective grades to those otherwise authorized for the Army of the United States. While detailed under the provisions of this section retired noncommissioned officers of the Army of the United States shall receive active pay and allowances. [*40 Stat. L. —.*]

SEC. 4. [Military training in schools and colleges — arms, tentage and equipment — detail of officers.] That during the present war such arms, tentage, and equipment as the Secretary of War shall deem necessary for

proper military training shall be supplied by the Government to schools and colleges other than those provided for in section forty-seven of the national-defense Act approved June third, nineteen hundred and sixteen, having a course of military training prescribed by the Secretary of War, and having not less than one hundred physically fit male students above the age of fourteen years, under such rules and regulations as he may prescribe; and the Secretary of War is hereby authorized during the present war to detail commissioned and noncommissioned officers of the Army of the United States to said schools and colleges, detailing not less than one such officer or noncommissioned officer to each five hundred students under military instruction; but no officer or noncommissioned officer shall be so detailed who has not had at least one year's active service in the Army of the United States. [40 Stat. L. —.]

For Act of June 3, 1916, § 47 see *supra*, p. 957.

An Act To provide for reimbursement of actual expenses or flat per diem for enlisted men traveling on duty under competent orders.

[Act of April 20, 1918, ch. —, 40 Stat. L. —.]

[Enlisted men — expenses — reimbursement.] That hereafter under such regulations and within such maximum rates as may be prescribed by the Secretary of War enlisted men may be reimbursed for actual expenses of travel, including subsistence and lodging, incurred while traveling under competent orders and not embraced in the movement of troops, or they may be paid a flat per diem therefor in lieu of such reimbursement. [40 Stat. L. —.]

An Act Authorizing the President during the existing emergency to sell supplies, materials, equipment, or other property, heretofore or hereafter purchased, acquired, or manufactured by the United States, in connection with, or incidental to, the prosecution of the war.

[Act of May 10, 1918, ch. —, 40 Stat. L. —.]

[War materials, sales — disposition of proceeds.] That during the existing emergency the President be, and he hereby is, authorized, in his discretion, and upon such terms as he shall deem expedient, through the head of any executive department, to sell any supplies, materials, equipment or other property heretofore or hereafter purchased, acquired, or manufactured by the United States in connection with, or incidental to, the prosecution of the war, to any person, partnership, association, or corporation, or to any foreign State or Government engaged in war against any Government with which the United States is at war; and any moneys received by the United States as the proceeds of any such sale shall be covered into the Treasury of the United States and a full report of the same shall be forthwith submitted to Congress. [40 Stat. L. —.]

Joint resolution providing for the calling into military service of certain classes of persons registered and liable for military service under the terms of the Act of Congress approved May eighteen, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States."

[Resolution of May 16, 1918, ch. —, 40 Stat. L. —.]

[Calling of members of classes for immediate service.] That if under any regulations heretofore or hereafter prescribed by the President persons registered and liable for military service under the terms of the Act of Congress approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," are placed in classes for the purpose of determining their relative liability for military service, no provision of said Act shall prevent the President from calling for immediate military service under regulations heretofore or hereafter prescribed by the President all or part of the persons in any class or classes except those exempt from draft under the provisions of said Act, in proportion to the total number of persons placed in such class or classes in the various subdivisions of the States, Territories, and the District of Columbia designated by the President under the terms of said Act; or from calling into immediate military service persons classed as skilled experts in industry or agriculture, however classified or wherever residing. *[40 Stat. L. —.]*

Joint Resolution Providing for the registration for military service of all male persons citizens of the United States and all male persons residing in the United States who have, since the fifth day of June, nineteen hundred and seventeen, and on or before the day set for the registration by proclamation by the President, attained the age of twenty-one years, in accordance with such rules and regulations as the President may prescribe under the terms of the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States."

[Resolution of May 20, 1918, ch. —, 40 Stat. L. —.]

[SEC. 1.] [Registration of persons becoming 21 since June 5, 1917 — classification.] That during the present emergency all male persons, citizens of the United States and all male persons residing in the United States, who have, since the fifth day of June, nineteen hundred and seventeen, and on or before the day set for the registration by proclamation by the President, attained the age of twenty-one years, shall be subject to registration in accordance with regulations to be prescribed by the President, and that upon proclamation by the President, stating the time and place of such registration, it shall be the duty of all such persons, except such persons as are exempt from registration under the Act of May eighteenth, nineteen hundred and seventeen, and any Act or Acts.

amendatory thereof, to present themselves for and submit to registration under the provisions of said Act approved May eighteenth, nineteen hundred and seventeen, and they shall be registered in the same manner and subject to the same requirements and liabilities as those previously registered under the terms of said Act: *Provided*, That those persons registered under the provisions of this Act shall be placed at the bottom of the list of those liable for military service, in the several classes to which they are assigned, under such rules and regulations as the President may prescribe. [40 Stat. L. —.]

For the Act of May 18, 1917, see *supra*, p. 1010.

SEC. 2. [Registration of persons subsequently becoming 21 — exceptions.] That after the day set under section one hereof for the registration by proclamation by the President at such intervals as the President may from time to time prescribe, the President may require that all male persons, citizens of the United States and all male persons residing in the United States, who have attained the age of twenty-one years since the last preceding date of registration, and on or before the next day set for the registration by proclamation by the President, except such persons as are exempt from registration under the Act of May eighteenth, nineteen hundred and seventeen, and any Act or Acts amendatory thereof, shall be registered in the same manner and subject to the same requirements and liabilities as those previously registered under the terms of said Act: *Provided*, That students who are preparing for the ministry in recognized theological or divinity schools, and students who are preparing for the practice of medicine and surgery in recognized medical schools, at the time of the approval of this Act shall be exempt from the selective draft prescribed in the Act of May eighteenth, nineteen hundred and seventeen. [40 Stat. L. —.]

SEC. 3. [Persons registered — liability to military service.] That all such persons when registered shall be liable to military service and to draft under the terms of said Act approved May eighteenth, nineteen hundred and seventeen, under such regulations as the President may prescribe not inconsistent with the terms of said Act. [40 Stat. L. —.]

SEC. 4. [Application of Selective Service Act.] That all such persons shall be subject to the terms and provisions and liabilities of said Act approved May eighteenth, nineteen hundred and seventeen, in all respects as if they had been registered under the terms of said Act, and every such person shall be deemed to have notice of the requirements of said Act and of this joint resolution upon the publication of any such proclamation by the President. [40 Stat. L. —.]

[SEC. 1.] * * * [Ordnance Department — disbursing officer — appointment of army officer.] The Chief of Ordnance is authorized to appoint one of the Army officers serving in his office as disbursing officer to pay the civilian employees in the Ordnance Office authorized in this or

any other appropriation Act for the fiscal year nineteen hundred and nineteen. [40 Stat. L. —.]

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918.

An Act Making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

[Act of July 9, 1918, ch. —, 40 Stat. L. —.]

* * * **[Mileage to aviation officers.]** That hereafter mileage to officers of the Army traveling on duty in connection with aviation shall be paid from the appropriation for the work in connection with which the travel is performed. [40 Stat. L. —.]

* * * **[Apportionment of moneys appropriated for aviation purposes.]** That the President may hereafter apportion and allot the moneys herein or heretofore appropriated for aviation purposes in such manner as he may deem most advisable for the accomplishment of said purposes with the same force and effect as though such apportionment had been made by this Act. [40 Stat. L. —.]

* * * **[Aviation service — college education — requirement.]** That no person otherwise qualified for service as a cadet, pilot, military aviator, or other officer in the aviation service, shall be barred from such service by reason of not being equipped with a college education. [40 Stat. L. —.]

* * * **[Exchange of aerial material.]** That, subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, balloons, and appurtenances may be exchanged in part payment for new equipment of the same or similar character to be used for the same purposes as those proposed to be exchanged. [40 Stat. L. —.]

* * * **[Mileage for foreign instructors.]** That during the present emergency, officers and enlisted men of foreign armies attached to the United States Army as instructors or inspectors when traveling in the United States on authorized official business pertaining to aviation shall be entitled to receive, from funds appropriated by this Act, the same mileage and transportation allowances as are authorized for officers or enlisted men of the Regular Army. [40 Stat. L. —.]

* * * **[Sale of war supplies, material, etc., disposition of proceeds — report.]** That the President be, and he hereby is, authorized, through the head of any executive department, to sell, upon such terms as the head of such department shall deem expedient, to any person, partnership, association, corporation, or any other department of the Government, or to any foreign State or Government, engaged in war against any Government with which the United States is at war, any war supplies, material and equipment, and any by-products thereof, and any building, plant or

factory, acquired since April sixth, nineteen hundred and seventeen, including the lands upon which the plant or factory may be situated, for the production of such war supplies, materials, and equipment which, during the present emergency, may or may hereafter be purchased, acquired, or manufactured by the United States: *Provided further*, That sales of guns and ammunition made under the authority contained in this or any other Act shall be limited to sales to other departments of the Government and to foreign States or Governments engaged in war against any Government with which the United States is at war, and to members of the National Rifle Association and of other recognized associations organized in the United States for the encouragement of small-arms target practice: *Provided further*, That a detailed report shall be made to Congress on the first day of each regular session of the sales of any war supplies, matériel, lands, factories, or buildings, and equipment made under the authority contained in this or any other Act, except sales made to any foreign State or Government engaged in war against any Government with which the United States is at war, showing the character of the articles sold, to whom sold, the price received therefor, and the purpose for which sold: *Provided*, That any moneys received by the United States as the proceeds of any such sale shall be deposited to the credit of that appropriation out of which was paid the cost to the Government of the property thus sold, and the same shall immediately become available for the purposes named in the original appropriation. [40 Stat. L. —.]

* * * [Per diem to employees authorized to travel and to members of draft boards.] For all expenses necessary in the registration of persons available for military service and in the selection of certain such persons and their draft into the military service: *Provided*, That per diem allowances in lieu of subsistence not exceeding \$4 may be paid to those employees authorized to travel, and to members of the boards when in attendance upon board meetings at too great a distance from their homes to enable them to live there. * * * [40 Stat. L. —.]

[Draft boards — rent of quarters — payments for rents.] That, during the present emergency, the requirements of section thirty-seven hundred and forty-four of the Revised Statutes shall not apply to the rent of quarters for the use of local, district, or medical advisory boards where the amount to be paid is less than is customarily charged the public for the same quarters: *Provided*, That all payments made by disbursing officers appointed in connection with the execution of the selective service law for rents unsupported by a lease may be passed to their credit by the accounting officers of the Treasury if otherwise correct. [40 Stat. L. —.]

For R. S. sec. 3744, see 6 Fed. Stat. Ann. 132.

* * * [Bands — additional.] That the Secretary of War is authorized to organize for use during the present emergency twenty bands additional to those now authorized for the Army to be organized as are bands of Infantry. [40 Stat. L. —.]

* * * **[Army field clerks — pay and allowances — entrance pay — increase for foreign service.]** That during the present emergency Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks, Quartermaster Corps, not including retirement: *Provided, however,* That the minimum or entrance pay, exclusive of said allowances, of said Army field clerks shall be \$1,200 per annum: *Provided further,* That Army field clerks shall receive the same increase of pay for service beyond the continental limits of the United States as is now allowed by law to commissioned officers of the Army. [40 Stat. L. —.]

* * * **[Assignment of clerks, etc., at headquarters, etc., to the bureaus of War Department.]** That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau of the War Department. [40 Stat. L. —.]

* * * **[Judge Advocate General's Department — grades of first lieutenant and captain authorized.]** That during the existing emergency the President is authorized to appoint in the Officers' Reserve Corps and the National Army, for service in the Judge Advocate General's Department, in addition to the grades now authorized, officers of the grades of first lieutenant and captain from such citizens as he shall find to be physically, mentally, and morally qualified for appointment. [40 Stat. L. —.]

* * * **[Appointment from staff corps to line of Army.]** That hereafter the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint any chief of a staff corps, department, or bureau of the Army who has had forty or more years of service in the Army, a major general of the line of the Army. The officers so appointed shall not exceed two, and shall be extra numbers in the list of major generals of the line. [40 Stat. L. —.]

* * * **[Officers serving in Canal Zone — housing.]** Hereafter officers of the Army pertaining to the United States troops serving in the Canal Zone shall not be required to pay rent for the occupancy of houses of the Panama Canal to which they may be assigned. [40 Stat. L. —.]

* * * **[Horses of officers ordered overseas or to Alaska — transportation to remount stations.]** That hereafter, under such regulations as the Secretary of War may direct, the authorized horses of mounted officers ordered for duty over the seas or to Alaska may be transported at public expense to remount depots or elsewhere in the United States for safekeeping during the absence of such officers. [40 Stat. L. —.]

* * * **[Enlisted men — travel allowance.]** That in the discretion of the Secretary of War, and under such regulations as he may prescribe, travel pay at the rate now prescribed by law for discharged soldiers may be given to all enlisted men for whom the law authorizes travel allowances as an incident to their entry upon and relief from active duty with the Army. [40 Stat. L. —.]

* * * **[Civilian employees of Quartermaster Corps — number and salary limited.]** That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [40 Stat. L. —.]

* * * **[Motor ambulances — selection of types.]** That the Secretary of War may in his discretion select types and makes of motor ambulances for the Army and authorize their purchase without regard to the laws prescribing advertisement for proposals for supplies and materials for the Army. [40 Stat. L. —.]

* * * **[Medical Department — increase — major general — brigadier generals.]** That the Medical Department of the Regular Army be, and is hereby, increased by one Assistant Surgeon General, for service abroad during the present war, who shall have the rank of major general, and two Assistant Surgeons General, who shall have the rank of brigadier general, all of whom shall be appointed from the Medical Corps of the Regular Army. [40 Stat. L. —.]

* * * **[Medical Department — increase — distribution of officers.]** That the President may nominate and appoint in the Medical Department of the National Army, by and with the advice and consent of the Senate, from the Medical Reserve Corps of the Regular Army not to exceed two major generals and four brigadier generals.

That the commissioned officers of the Medical Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law.

That the commissioned officers of the Medical Reserve Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law for the Medical Corps of the Regular Army: *Provided*, That nothing in this Act shall be held or construed so as to discharge any officer of the Regular Army or deprive him of a commission which he now holds therein. [40 Stat. L. —.]

* * * **[Slavic Legion — composition — requisites for membership — training — disposition.]** That, under such regulations as the President may prescribe, a force of volunteer troops in such unit or units as he may direct may be raised to be composed of Jugo-Slavs, Czecho Slovaks, and Ruthenians (Ukrainians) belonging to the oppressed races of the Austro-Hungarian or German Empire resident in the United States but not citizens thereof nor subject to the draft. Such force shall be known as the Slavic Legion or by such other description as the President may prescribe. No man shall be enlisted in it until he has furnished satisfactory evidence that he will faithfully and loyally serve the cause of the United States and that he desires to fight the Imperial governments of Germany and Austria-Hungary, and the allies thereof. The force so raised and duly sworn into the service may be equipped, maintained, and trained with our own troops

or separately as the President may direct and thereafter may be transported to such field of action as the President may direct to be used against the common enemy in connection with our own troops or with those of any nation associated with the United States in the present war; and the several items of expense involved in the equipment, maintenance, training, and transportation of such force may be paid from the respective appropriations herein made or from any subsequent appropriations for the same: *Provided*, That American citizens of Austrian or German birth, or who were born in alien enemy territory, who have passed the necessary examination and whose loyalty is unquestioned, may, in the discretion of the Commander in Chief of the Army and Navy, be commissioned in the United States Army or Navy. [40 Stat. L. —.]

* * * [Civilian employees in gun factories, etc.— pay for work done on legal days of absence.] That the Secretary of War is hereby authorized and empowered, during the period of the war, to make payment, under such regulations as may be prescribed by him, in addition to and at the rate of pay now provided by law to each and all civilians employed by the War Department in gun factories and arsenals for work performed on all days of leave of absence granted by law to such employees. [40 Stat. L. —.]

* * * [Medals of honor — distinguished-service crosses — distinguished-service medals — awards — loss — acceptance and wearing of medals presented by foreign governments — presentation to officers and men of allied countries — service in National Guard.] That the provisions of existing law relating to the award of medals of honor to officers, non-commissioned officers, and privates of the Army be, and they hereby are, amended so that the President is authorized to present, in the name of the Congress, a medal of honor only to each person who, while an officer or enlisted man of the Army, shall hereafter, in action involving actual conflict with an enemy, distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service cross of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who shall hereafter distinguish, himself or herself by extraordinary heroism in connection with military operations against an armed enemy.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who hereafter shall distinguish, himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility; and said distinguished-service medal shall also be issued to all enlisted men of the Army to whom the certificate of merit has been granted up to and including the date of the passage of

this Act under the provisions of previously existing law, in lieu of such certificate of merit, and after the passage of this Act the award of the certificate of merit for distinguished service shall cease; and additional pay heretofore authorized by law for holders of the certificate of merit shall not be paid to them beyond the date of the award of the distinguished-service medal in lieu thereof as aforesaid.

That each enlisted man of the Army to whom there has been or shall be awarded a medal of honor, a distinguished-service cross, or a distinguished-service medal shall, for each such award, be entitled to additional pay at the rate of \$2 per month from the date of the distinguished act or service on which the award is based, and each bar, or other suitable device, in lieu of a medal of honor, a distinguished-service cross, or a distinguished-service medal, as hereinafter provided for, shall entitle him to further additional pay at the rate of \$2 per month from the date of the distinguished act or service for which the bar is awarded, and said additional pay shall continue throughout his active service, whether such service shall or shall not be continuous; but when the award is in lieu of the certificate of merit, as provided for in section three hereof, the additional pay shall begin with the date of the award.

That no more than one medal of honor or one distinguished-service cross or one distinguished-service medal shall be issued to any one person; but for each succeeding deed or act sufficient to justify the award of a medal of honor or a distinguished-service cross or a distinguished-service medal, respectively, the President may award a suitable bar, or other suitable device, to be worn as he shall direct; and for each other citation of an officer or enlisted man for gallantry in action published in orders issued from the headquarters of a force commanded by a general officer he shall be entitled to wear, as the President shall direct, a silver star three-sixteenths of an inch in diameter.

That the Secretary of War be, and he is hereby, authorized to expend from the appropriations for contingent expenses of his department from time to time so much as may be necessary to defray the cost of the medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices hereinbefore provided for.

That whenever a medal, cross, bar, ribbon, rosette, or other device presented under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it was awarded, such medal, cross, bar, ribbon, rosette, or device shall be replaced without charge therefor.

That, except as otherwise prescribed herein, no medals of honor, distinguished-service cross, distinguished-service medal, or bar or other suitable device in lieu of either of said medals or of said cross, shall be issued to any person after more than three years from the date of the act justifying the award thereof, nor unless a specific statement or report distinctly setting forth the distinguished service and suggesting or recommending official recognition thereof shall have been made at the time of the distinguished service or within two years thereafter, nor unless it shall appear from official records in the War Department that such person has so distinguished himself as to entitle him thereto; but in case an individual who shall distinguished himself dies before the making of the award to

which he may be entitled, the award may nevertheless be made and the medal or cross or the bar or other emblem or device presented, within three years from the date of the act justifying the award thereof, to such representative of the deceased as the President may designate; but no medal, cross, bar, or other device, hereinbefore authorized, shall be awarded or presented to any individual whose entire service subsequently to the time he distinguished himself shall not have been honorable; but in cases of officers and enlisted men now in the Army for whom the award of the medal of honor has been recommended in full compliance with then existing regulations but on account of services which, though insufficient fully to justify the award of the medal of honor, appear to have been such as to justify the award of the distinguished-service cross or distinguished-service medal hereinbefore provided for, such cases may be considered and acted upon under the provisions of this Act authorizing the award of the distinguished-service cross and distinguished-service medal, notwithstanding that said services may have been rendered more than three years before said cases shall have been considered as authorized by this Act, but all consideration of and action upon any of said cases shall be based exclusively upon official records now on file in the War Department; and in the cases of officers and enlisted men now in the Army who have been mentioned in orders, now a part of official records, for extraordinary heroism or especially meritorious services, such as to justify the award of the distinguished-service cross or the distinguished-service medal hereinbefore provided for, such cases may be considered and acted on under the provisions of this Act, notwithstanding that said act or services may have been rendered more than three years before said cases shall have been considered as authorized by this Act, but all consideration of and action upon any said cases shall be based exclusively upon official records of the War Department.

That the President be, and he is hereby, authorized to delegate, under such conditions, regulations, and limitations as he shall prescribe, to the commanding general of a separate army or higher unit in the field, the power conferred upon him by this Act to award the medal of honor, the distinguished-service cross, and the distinguished-service medal; and he is further authorized to make from time to time any and all rules, regulations, and orders which he shall deem necessary to carry into effect the provisions of this Act and to execute the full purpose and intention thereof.

That American citizens who have received, since August first, nineteen hundred and fourteen, decorations or medals for distinguished service in the armies or in connection with the field service of those nations engaged in war against the Imperial German Government, shall, on entering the military service of the United States, be permitted to wear such medals or decorations.

That any and all members of the military forces of the United States serving in the present war be, and they are hereby, permitted and authorized to accept during the present war or within one year thereafter, from the Government of any of the countries engaged in war with any country with which the United States is or shall be concurrently likewise engaged in war, such decorations, when tendered, as are conferred by such Government upon the members of its own military forces; and the consent of

Congress required therefor by clause eight of section nine of Article I of the Constitution is hereby expressly granted: *Provided*, That any officer or enlisted man of the military forces of the United States is hereby authorized to accept and wear any medal or decoration heretofore bestowed by the Government of any of the nations concurrently engaged with the United States in the present war.

That the President is authorized, under regulations to be prescribed by him, to confer such medals and decorations as may be authorized in the military service of the United States upon officers and enlisted men of the military forces of the countries concurrently engaged with the United States in the present war.

That the Secretary of War be, and he is hereby, authorized and directed to procure a bronze medal, with suitable device and ribbon, to be presented to each of the several officers and enlisted men, and families of such as may be dead, of the National Guard who, under the orders of the President of the United States, served not less than ninety days in the War with Spain, and who have received an honorable discharge from the service, and who served on the Mexican border in the years nineteen hundred and sixteen and nineteen hundred and seventeen and who are not eligible to receive the Mexican service badge heretofore authorized by the President: *Provided*, That such medals shall not be issued to men who have, subsequent to such service, been dishonorably discharged from the service or deserted: *And provided further*, That the sum of \$7,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying this last paragraph into effect. [40 Stat. L. —.]

* * * [Materials for Ordnance Department — American manufacture — duty on imported materials.] The Secretary of War is authorized, during the present emergency, in addition to the appropriations and obligations specifically authorized by law, to incur obligations for ordnance and ordnance supplies and materials: *Provided*, That the aggregate amount of such obligations shall not exceed \$500,000,000.

Provided, That out of the authorizations provided for ordnance stores, ammunition, ordnance stores and supplies, small-arms target practice, manufacture of arms, automatic machine rifles, and armored motor cars there is authorized to be expended and is hereby appropriated the sum of \$600,000,000.

Provided further, That all material purchased under the appropriations for the Ordnance Department in this Act shall be of American manufacture, except in cases when, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases abroad, which material shall be admitted free of duty. [40 Stat. L. —.]

* * * [National Guard — composition — disbursement of appropriations for.] All the money hereinbefore appropriated for arming, equipping, and training the National Guard shall be disbursed and accounted for as such and for that purpose shall constitute one fund: *Provided*, That the National Guard of any State, Territory, or the District of Columbia

shall include such officers and enlisted men of the staff corps and departments, corresponding to those of the Regular Army, as may be authorized by the Secretary of War. [40 Stat. L. —.]

* * * [Members of National Guard and Organized Militia in federal service — longevity pay.] That officers and enlisted men of the forces of the Army of the United States other than the Regular Army who have had service in the National Guard and Organized Militia of any State, Territory, or District, but who have entered the service in the forces of the Army of the United States, otherwise than through draft under the provisions of section one hundred and eleven of the Act of June third, nineteen hundred and sixteen, known as the national defense Act, shall be upon the same footing as to pay and allowance as the members of said forces who were drafted under the provisions of said section. [40 Stat. L. —.]

For the Act of June 3, 1916, ch. 134, § 111, see *anti*, p. 458s.

* * * [Payment from total available balances.] That during the present emergency when pressing obligations are required to be paid by a disbursing officer of the Army and the allotment to his official credit under the proper appropriation or appropriations is temporarily insufficient to pay the same, he is authorized to make payments from the total available balance to his official credit, provided sufficient funds under proper appropriation or appropriations have been appropriated by the chief officer of the bureau or department for the expenditure. When such disbursements are made, the accounts of the disbursing officer shall show the charging of the proper appropriations, and the balances thereunder, which will be adjusted by the disbursing officer on receipt of funds, or by the accounting officer of the Treasury. [40 Stat. L. —.]

CHAPTER V.

[SEC. 1.] [Army Nurse Corps — composition.] That the Nurse Corps (female) of the Medical Department of the Army shall hereafter be known as the Army Nurse Corps, and shall consist of one superintendent, who shall be a graduate of a hospital-training school having a course of instruction of not less than two years; of as many chief nurses, nurses, and reserve nurses as may from time to time be needed and prescribed or ordered by the Secretary of War, and, in the discretion of the Secretary of War, of not exceeding six assistant superintendents, and, for each Army or separate military force beyond the continental limits of the United States, one director and not exceeding two assistant directors of nursing service, all of whom shall be graduates of hospital-training schools and shall have passed such professional, moral, mental, and physical examination as shall be prescribed by the Secretary of War. [40 Stat. L. —.]

SEC. 2. [Rules and regulations.] That rules and regulations prescribing the duties of the members of the Army Nurse Corps shall be prescribed by the Surgeon General of the United States Army, subject to the approval of the Secretary of War. [40 Stat. L. —.]

SEC. 3. [Superintendent and members — appointment and removal — promotions.] That the superintendent shall be appointed by, and, at his discretion, be removed by, the Secretary of War; that all other members of said corps shall be appointed by, and, at his discretion, be removed by, the Surgeon General by and with the approval of the Secretary of War; but the assistant superintendents, the directors, the assistant directors, and the chief nurses shall be appointed by promotion from other members of the corps, and shall, upon being relieved from duty as such, unless removed for incompetency or misconduct, revert to the grades in the corps from which they were promoted. [40 Stat. L. —.]

SEC. 4. [Salaries.] That the annual rate of pay of the members of said corps shall be as follows: Superintendent, \$2,400; assistant superintendents and directors, \$1,800; assistant directors, \$1,500; chief nurses, \$120 in addition to the pay of a nurse; nurses, \$720 for the first period of three years' service, \$780 for the second period of three years' service, \$840 for the third period of three years' service, \$900 for the fourth period of three years' service, and \$960 after twelve years' service in said corps (including in all cases time of service as contract nurse); reserve nurses, when upon active duty, will receive the same pay as nurses who have served in the corps for periods corresponding to the full period of their active service; and all members of said corps, in addition to the foregoing, the sum of \$10 per month when serving beyond the continental limits of the United States (excepting Porto Rico and Hawaii). [40 Stat. L. —.]

SEC. 5. [Leave of absence — sick leave.] That members of said Nurse Corps shall be entitled to cumulative leave of absence with pay at the rate of thirty days for each calendar year of service in said corps, not exceeding, however, one hundred and twenty days at one time, and in addition thereto sick leave not exceeding thirty days in any one calendar year in cases of illness or injury incurred in the line of duty. [40 Stat. L. —.]

SEC. 6. [Traveling allowances — quarters and subsistence — medical care.] That members of said Nurse Corps shall receive transportation and necessary expenses when traveling under orders, and such allowances of quarters and subsistence and, during illness, such medical care as may be prescribed in regulations by the Secretary of War; and when at places where no public quarters are available, commutation in lieu thereof, and of heat and light therefor at such rates and upon such conditions as are now or shall hereafter be provided by law. [40 Stat. L. —.]

SEC. 7. [Former Acts repealed.] That section nineteen of chapter one hundred and ninety-two of Thirty-first Statutes, page seven hundred and fifty-three; chapter fifty of Thirty-seventh Statutes, page seventy-two; that part of the Act approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and seventy-five), providing for allowances, subsistence, and medical care during illness for the Superintendent of the Nurse Corps; and that part of the Act approved March twenty-third, nineteen hundred and ten (Thirty-sixth Statutes,

page two hundred and forty-nine) prescribing the pay of the superintendent and members of the Nurse Corps, be, and the same are, hereby repealed. [40 Stat. L. —.]

For the Act of Feb. 2, 1901, ch. 192, § 19, see 7 Fed. Stat. Ann. 987.

For the Act of March 4, 1912, ch. 50, see 1914 Supp. Fed. Stat. Ann. 408.

For the Act of Aug. 24, 1912, ch. 391, see 1914 Supp. Fed. Stat. Ann. 412.

For the Act of March 23, 1910, ch. 115, see 1912 Supp. Fed. Stat. Ann. 403.

CHAPTER VII.

* * * [Restrictions as to purchase of military supplies — suspension.]

That so much of section eleven hundred and thirty-three of the Revised Statutes, and of section nine of the Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, as restricts the purchase and distribution of military stores and supplies to officers of the Quartermaster Corps, be, and the same is hereby, suspended for the period of the present war. [40 Stat. L. —.]

For R. S. sec. 1133, see 7 Fed. Stat. Ann. 970.

For the Act of June 3, 1916, ch. 134, § 9, see *supra*, p. 927

CHAPTER VIII.

* * * [Persons discharged from military or naval service — care and treatment.]

That the President of the United States is hereby authorized and empowered to make provision for such care and treatment as he may deem advisable of persons discharged from the military or naval forces of the United States on account of physical disability who are citizens of any nation at war with a nation with which the United States is at war; but such provision shall be made only for the citizens of a nation that makes suitable provision for the care and treatment of persons discharged from the military or naval forces on account of physical disability who are citizens of the United States: *Provided*, That such care and treatment shall in no case exceed the care and treatment authorized by law and regulations for members of the Army and Navy of the United States discharged from the military or naval service for like cause. [40 Stat. L. —.]

CHAPTER IX.

* * * [Army Mine Planter Service — composition — pay and allowances — retirement.]

That hereafter there shall be in the Coast Artillery Corps of the Regular Army a service to be known as the Army Mine Planter Service, which shall consist, for each mine planter in the service of the United States, of one master, one first mate, one second mate, one chief engineer, and one assistant engineer, who shall be warrant officers appointed by and holding their offices at the discretion of the Secretary of War, and two oilers, four firemen, four deck hands, one cook, one steward, and one assistant steward, who shall be appointed from enlisted men of the Coast Artillery Corps under such regulations as the Secretary of War may prescribe: *Provided*, That the Coast Artillery Corps is hereby increased by such numbers of warrant officers and enlisted men as may be necessary to constitute the force provided by this chapter: *Provided further*, That the annual pay

of the warrant officers and enlisted men in the various grades established by this chapter shall be as follows: Masters, \$1,800; first mates, \$1,320; second mates, \$972; chief engineers, \$1,700; assistant engineers, \$1,200; oilers, \$432; firemen, \$396; deck hands, \$216; cooks, \$360; steward, \$540; assistant stewards, \$288: *And provided further*, That warrant officers shall have such allowances as the Secretary of War may prescribe, and shall be retired, and shall receive longevity pay, as now provided by law for officers of the Army, and that the enlisted force herein provided for shall receive the allowances and continuous-service pay now provided by law for enlisted men of the Army: *And provided further*, That in computing length of service for retirement, and in computing longevity pay for warrant officers and continuous-service pay for the enlisted men authorized by this chapter, service on boats in the service of the Quartermaster Department of the Quartermaster Corps prior to the passage of this Act shall be counted: *And provided further*, That during the continuation of the present emergency all enlisted men of the Mine Planter Service of the Army of the United States in active service whose base pay does not exceed \$21 per month shall receive an increase of \$15 per month; those whose base pay is \$24, an increase of \$12 per month; those whose base pay is \$30, \$33, \$36, or \$40, an increase of \$8 per month; and those whose base pay is \$45 or more, an increase of \$6 per month: *And provided further*, That the increases of pay herein authorized shall not enter into the computation of continuous service pay. [40 Stat. L. —.]

CHAPTER XI.

* * * [Quotas for Military Service — method for determining.] That in the determination of quotas for the several States, Territories, and the District of Columbia, or subdivisions thereof, to be raised for military service under the terms of the Act entitled “An Act to authorize the President to increase temporarily the Military Establishment of the United States,” approved May eighteenth, nineteen hundred and seventeen, the provisions of the joint resolution approved May sixteenth, nineteen hundred and eighteen, providing for the calling into military service of certain classes of persons registered and liable for military service under the said Act, shall apply to any or all forces heretofore or hereafter raised under the provisions of said Act for any State, Territory, District, or subdivision thereof, from and after the time when such State, Territory, District, or subdivision thereof has been completed or completes its quota of forces called and furnished under the President’s proclamation dated July twelfth, nineteen hundred and seventeen. [40 Stat. L. —.]

For the Act of May 18, 1917, see *supra*, p. 1010.

The Res. of May 16, 1918, is given *supra*, p. 1039.

CHAPTER XII.

[SEC. 1.] [Alien — registration and drafting.] That the President may by proclamation set a day or days and place or places for the registration for military service of male aliens within designated ages residing within the United States who are citizens or subjects of a foreign country with whose Government the United States has concluded or hereafter concludes a convention or agreement in accordance with the terms of which its

citizens or subjects within designated ages, residing within the United States, become under certain conditions liable to be drafted into the military service of the United States; that upon proclamation by the President stating the time and place of such registration it shall be the duty of any such alien, unless exempted from registration by the terms of the President's proclamation, to present himself for and submit to registration under the provisions of the Act approved May eighteenth, nineteen and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," and all amendments thereto, and he shall thereupon be registered in the same manner as those previously registered under the terms of said Act; and every such alien shall be deemed to have notice of the requirements of said Act and this joint resolution upon the publication by the President of any such proclamation, and any such alien who shall willfully fail or refuse to present himself for registration or to submit thereto shall be subject to all the provisions and liable to all the penalties provided in said Act or any amendment thereto. [40 Stat. L. —.]

For the Act of May 18, 1917, see, *supra*, p. 1010.

SEC. 2. [Liability of registered aliens to military service — exceptions.] That any such alien, when registered, shall be and remain liable to military service in the forces of the United States and subject to draft under the provisions of said convention or agreement and of said Act and all amendments thereto, and subject to such regulations as the President may have prescribed or may prescribe under the terms thereof, unless during the period specified in the convention or agreement concluded with the country whereof he is a citizen or subject and designated in the President's proclamation, he shall have enlisted or enrolled in the military forces of his own country or returned to his own country for the purpose of enlisting or enrolling in its military forces, or unless the country whereof he is a citizen or subject, through its diplomatic representatives, in accordance with the terms of the convention or agreement concluded between the United States and such foreign country, shall issue to such alien a certificate of exemption from military service. [40 Stat. L. —.]

SEC. 3. [Return of alien to native country — liability to service.] That any such alien, after the expiration of time fixed by the President's proclamation within which he may enlist or enroll in the military forces of his own country, return to his own country for the purpose of military service, or be exempted through the diplomatic representative of the country whereof he is a citizen or subject, shall be and remain subject in all respects to the terms, provisions, liabilities, and penalties of said Act and all amendments thereto, except as modified by the terms of the convention or agreement concluded between the United States and the country whereof such alien is a citizen or subject, and shall be subject to such regulations as the President may have prescribed or may prescribe under the terms of said Act. [40 Stat. L. —.]

CHAPTER XVIII.

* * * **[Graduates of Military Academy — service as instructors.]**
That the service of graduates of the Military Academy may be utilized dur-

ing the months of June, July, August, and September of the year in which they graduate as instructors at the citizens' training camps, and their graduation leave may be taken at the termination of their services as instructors at these camps. [40 Stat. L. —.]

* * * [Mounts of deceased officers — transportation.] That hereafter under such regulations as the Secretary of War may prescribe, authorized mounts of officers who die in the service may, within ninety days after the death of the officer, be transported at public expense from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors, or such mount may be disposed of as directed by such representatives or executors. [40 Stat. L. —.]

* * * [Deceased civilian employees — transportation of baggage.] That hereafter, under such regulations as the Secretary of War may prescribe, transportation at public expense may be provided for the baggage of civilian employees who die in the service from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors. [40 Stat. L. —.]

* * * [Transmission of accounts — time.] That the Secretary of the Treasury is hereby authorized in time of war, upon request to the Secretary of War, to extend the period during which money accounts covering expenditures from appropriations for the Army may be transmitted to the Auditor for the War Department after their receipt in the War Department from sixty to ninety days. [40 Stat. L. —.]

CHAPTER XIX.

[SEC. 1.] [Target practice — protection of life and property.] That in the interest of the national defense, and for the better protection of life and property on said waters, the Secretary of War is hereby authorized and empowered to prescribe such regulations as he may deem best for the use and navigation of any portion or area of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by Coast Artillery fire in target practice or otherwise, or by the proving operations of the Government ordnance proving grounds at Sandy Hook, New Jersey, or at any Government ordnance proving ground that may be established elsewhere on or near such waters, and of any portion or area of said waters occupied by submarine mines, mine fields, submarine cables, or other material and accessories pertaining to seacoast fortifications, or by any plant or facility engaged in the execution of any public project of river and harbor improvement; and the said Secretary shall have like power to regulate the transportation of explosives upon any of said waters: *Provided*, That the authority hereby conferred shall be so exercised as not unreasonably to interfere with or restrict the food fishing industry, and the regulations prescribed in pursuance hereof shall provide for the use of such waters by food fishermen operating under permits granted by the War Department. [40 Stat. L. —.]

SEC. 2. **[Enforcement of regulations — detail of public vessels.]** That to enforce the regulations prescribed pursuant to this chapter, the Secretary of War may detail any public vessel in the service of the War Department, or, upon the request of the Secretary of War, the head of any other department may enforce, and the head of any such department is hereby authorized to enforce, such regulations by means of any public vessel of such department. [40 Stat. L. —.]

SEC. 3. **[Regulations — posting — penalty for violation.]** That the regulation made [by] the Secretary of War pursuant to this Chapter shall be posted in conspicuous and appropriate places, designated by him, for the information of the public; and every person who and every corporation which shall willfully violate any regulations made by the said Secretary pursuant to this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court. [40 Stat. L. —.]

SEC. 4. **[Jurisdiction.]** That offenses against the provisions of this Chapter or any regulation made pursuant thereto, committed in any Territory or other place subject to the jurisdiction of the United States where there is no court having general jurisdiction of crimes against the United States, shall be cognizable in any court of such place or Territory having original jurisdiction of criminal cases in the place or Territory in which the offense has been committed, with the same right of appeal in all cases as is given in other criminal cases where imprisonment not exceeding six months forms a part of the penalty, and jurisdiction is hereby conferred upon such courts and such courts shall exercise the same for such purposes; and in case any such offense be committed beyond the territorial jurisdiction of any court having jurisdiction thereof, the offense shall be deemed and held to have been committed within the jurisdiction in which the offender may be found or into which he is first brought, and shall be tried by the court having jurisdiction thereof. [40 Stat. L. —.]

CHAPTER XX.

* * * **[Operation of public utilities — proceeds — disposition.]** That, in case of actual or threatened hostilities, any proceeds received from the operation of a public utility, in connection with engineer operations in the field overseas, shall be available for the purpose of such utility until the close of the fiscal year following that in which the proceeds are received, and a detailed report of such proceeds and application thereof shall be rendered to Congress on forms conforming as far as practicable to those used by American Companies in reports to the Interstate Commerce Commission: *Provided*, That the provision of the Act of March twenty-third, nineteen hundred and ten, making moneys arising from the disposition of serviceable quartermaster material available for the purposes of the appropriation throughout the fiscal year following that in which the disposition was

effected, is hereby extended to apply to material supplied to the Army by the Engineer Department. [40 Stat. L. —.]

For the Act of March 23, 1910, ch. 115, § 1, see 1912 Supp. Fed. Stat. Ann. 404.

* * * [Retired officers — active duty.] That when any retired officer of the Army is, in the discretion of the President, employed on active duty and assigned to duty in an arm, corps, department, or organization, he shall, for all purposes, except promotion, be considered an officer of such arm, corps, department, or organization while so serving, and shall be an extra number therein. [40 Stat. L. —.]

* * * [Grades of corporal bugler and bugler first class created.] That there are hereby created in the Army the grades of corporal bugler, and bugler, first class; and hereafter for each battalion and squadron headquarters of units in which the grade of bugler is now authorized, there shall be one corporal bugler, and for each company, battery, troop, or organization in which the grade of bugler is now authorized there shall be one bugler, first class. [40 Stat. L. —.]

* * * [Men outside of draft age — enlistment — men physically disqualified — draft.] That during the present war the President be, and he is hereby, authorized to enlist for service in the offices of the War Department or under its control or on detached service under its jurisdiction men outside the draft ages, and for the same purpose to draft men within such ages, who have been disqualified by minor physical defects for active service in the Army; to establish regulations under which such enlistments may be made, and to fix the pay and allowances of men so enlisted or drafted, which said pay and allowances shall not exceed those of enlisted men of the Regular Army. [40 Stat. L. —.]

[SEC. 1.] * * * [Quartermaster Corps — civilian employees — number — salary.] That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [40 Stat. L. —.]

This is from the Deficiencies Appropriation Act of July 8, 1918, ch. —.

WAR RISK INSURANCE

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

WAR SAVINGS CERTIFICATES

See PUBLIC DEBT

WAREHOUSES

Act of Aug. 11, 1916, ch. 313, 1057.

Sec. 1. *United States Warehouse Act*, 1057.

2. *Definitions* — “Warehouse,” “Agricultural Product,” “Person,” “Warehouseman,” “Receipt,” 1057.

3. *Authority of Secretary of Agriculture — Licensing Warehouses*, 1058.

4. *Issuance of License to Warehouseman*, 1058.

5. *Period of License*, 1058.

6. *Bond by Applicant for License*, 1059.

7. *Suit on Bond*, 1059.

8. *Designation of Warehouse as Bonded*, 1059.

9. *Licenses to Persons Not Warehousemen — Receipts for Agricultural Products*, 1060.

10. *Fees*, 1060.

11. *Licenses to Classify or Weigh Agricultural Products*, 1060.

12. *Suspension or Revocation of License*, 1060.

13. *Duty of Licensed Warehouseman to Receive Agricultural Products*, 1061.

14. *Deposits Subject to What Terms and Rules*, 1061.

15. *Inspection and Grading of Stored Products by Licensed Person*, 1061.

16. *Authority of Warehouseman to Mingle Deposits*, 1061.

17. *Receipts — Issuance by Warehouseman*, 1061.

18. *Contents of Receipt*, 1062.

19. *Standards for Agricultural Products — Establishment by Secretary of Agriculture*, 1063.

20. *Effect of Uncancelled Original Receipt — New Receipt*, 1063.

21. *Delivery of Stored Products*, 1063.

22. *Cancelling Receipts*, 1063.

23. *Records and Reports by Warehousemen*, 1063.

24. *Examination of Stored Agricultural Product — Findings — Publication*, 1064.

25. *Suspension or Revocation of License*, 1064.

26. *Publication of Results of Investigations, etc., Names and Addresses of Licensees, etc.*, 1064.

27. *Examination of Books, Records, etc.*, 1064.

28. *Rules and Regulations*, 1064.

29. *Impairment of Laws of Other States and United States*, 1065.

30. *Forgery, etc., of Licenses and Receipts*, 1065.

31. *Appropriation*, 1065.

32. *Effect of Invalidity of Part of Act*, 1065.

33. *Right to Amend, etc.*, 1065.

[SEC. 1.] [United States warehouse Act.] That this part, to be known as the United States warehouse Act, be and is hereby enacted, to read and be effective hereafter as follows:

That this Act shall be known by the short title of “United States warehouse Act.”

The foregoing section 1 and the following sections 2–33 constitute “Part C” of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

SEC. 2. [Definitions — “warehouse,” “agricultural product,” “person,” “warehouseman,” “receipt.”] That the term “warehouse” as

used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. The term "agricultural product" wherever used in this Act shall be deemed to mean cotton, wool, grains, tobacco, and flaxseed, or any of them. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt. [39 Stat. L. 486.]

See the note to the preceding section 1 of this Act.

SEC. 3. [Authority of Secretary of Agriculture—licensing warehouses.] That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 4. [Issuance of license to warehouseman.] That the Secretary of Agriculture is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 5. [Period of license.] That each license issued under sections four and nine of this Act shall be issued for a period not exceeding one year and shall specify the date upon which it is to terminate, and upon

showing satisfactory to the Secretary of Agriculture may from time to time be renewed or extended by a written instrument, which shall specify the date of its termination. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 6. [Bond by applicant for license.] That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond other than personal security to the United States to secure the faithful performance of his obligations as a warehouseman under the laws of the State, District, or Territory in which he is conducting such warehouse, as well as under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, including the requirements of fire insurance. Whenever the Secretary of Agriculture shall determine that a bond approved by him is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 7. [Suit on bond.] That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of sections six or nine, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 8. [Designation of warehouse as bonded.] That upon the filing with and approval by the Secretary of Agriculture of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in section six, has been filed with and approved by the Secretary of Agriculture, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 9. [Licenses to persons not warehousemen — receipts for agricultural products.] That the Secretary of Agriculture may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act and such rules and regulations to the same extent as is provided for warehousemen licensed hereunder. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 10. [Fees.] That the Secretary of Agriculture shall charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and a fee not exceeding \$2 per annum for each license or renewal thereof issued to a warehouseman under this Act. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 11. [Licenses to classify or weigh agricultural products.] That the Secretary of Agriculture may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and certificate the weight thereof, or both to classify and weigh the same and to certificate the grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 12. [Suspension or revocation of license.] That any license issued to any person to classify or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the Secretary of Agriculture, whenever he deems

necessary, may suspend a license temporarily without hearing. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 13. [Duty of licensed warehouseman to receive agricultural products.] That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 14. [Deposits subject to what terms and rules.] That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 15. [Inspection and grading of stored products by licensed person.] That grain, flaxseed, or any other fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 16. [Authority of warehouseman to mingle deposits.] That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 17. [Receipts — issuance by warehouseman.] That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse

licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 18. [Contents of receipt.] That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (1) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by law of the State in which the warehouse is located, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued if it have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 19. [Standards for agricultural products — establishment by Secretary of Agriculture.] That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products in this Act defined by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 1057.

The Secretary of Agriculture was authorized to establish standard grades of cotton by the Act of May 23, 1908 ch. 192, § 1, given in 1909 Supp. Fed. Stat. Ann. 6; 1 Fed. Stat. Ann. (2d ed.) 239.

SEC. 20. [Effect of uncanceled original receipt — new receipt.] That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 21. [Delivery of stored products.] That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 22. [Cancelling receipts.] That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 23. [Records and reports by warehousemen.] That every warehouseman conducting a warehouse licensed under this Act shall keep in a

place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and cancelled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 24. [Examination of stored agricultural product—findings—publication.] That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 25. [Suspension or revocation of license.] That the Secretary of Agriculture may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 26. [Publication of results of investigations, names and addresses of licensees, etc.] That the Secretary of Agriculture from time to time may publish the results of any investigations made under section three of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 27. [Examination of books, records, etc.] That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 28. [Rules and regulations.] That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 29. [Impairment of laws of other states and United States.] That nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 30. [Forgery, etc., of licenses and receipts.] That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture under this Act, or who shall violate or fail to comply with any provision of section eight of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500 or imprisoned not more than six months, or both, in the discretion of the court. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 31. [Appropriation.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the moneys appropriated by this Act to pay the salaries and expenses thereof. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 32. [Effect of invalidity of part of Act.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 1057.

SEC. 33. [Right to amend, etc.] That the right to amend, alter, or repeal this Act is hereby expressly reserved. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 1057.

WATERS

Act of July 26, 1916, ch. 257, 1066.

Reclamation Act Amended — Acceptance of Extension of Times of Payment by Present Owners — Notice — Payment of Installments, 1066.

Act of Aug. 11, 1916, ch. 319, 1067.

Sec. 1. Arid Public Lands — Reclamation — Irrigation, 1067.

2. Apportionment of Cost of Irrigation Canals, etc. — Liens, 1067.

3. Liens — Taxes and Assessments, 1068.

4. Approval of District Map or Plat, 1069.

5. Sale for Taxes and Assessments, 1069.

6. Patents — Subrogation to Rights of Purchaser — Relinquishment of Entered Land, 1069.

7. Notices — Hearing by Petition, etc. — Redemption, 1070.

8. Money Received from Sale of Public Lands — Disposition, 1070.

Act of Feb. 15, 1917, ch. 71, 1071.

Irrigation Act — Patents to Homesteaders — Water-right Certificates — Payment — Former Act Amended, 1071.

Act of June 12, 1917, ch. 27, 1071.

Sec. 1. Reclamation — Reimbursements of Moneys Advanced — Application of Moneys Refunded, etc. — Former Act Amended, 1071.

Act of Aug. 10, 1917, ch. 52, 1071.

Sec. 11. "Reclamation Act" — Suspension of Provision Relating to Residence, 1071.

Act of July 1, 1918, ch. —, 1072.

Reclamation Service — Purchase of Supplies — Procurement of Services — Open Market, 1072.

An Act To amend section fourteen of the reclamation extension Act approved August thirteenth, nineteen hundred and fourteen.

[*Act of July 26, 1916, ch. 257, 39 Stat. L. 390.*]

[**Reclamation Act amended — acceptance of extension of times of payment by present owners — notice — payment of installments.**] That section fourteen of an Act entitled "An Act extending the period of payment under reclamation projects, and for other purposes," approved August thirteenth, nineteen hundred and fourteen, be amended so as to read as follows:

"SEC. 14. That any person whose land or entry has heretofore become subject to the reclamation law, who desires to secure the benefits of the extension of the period of payments provided by this Act, shall, within six months after the issuance of the first public notice hereunder affecting his land or entry, notify the Secretary of the Interior, in the manner to be prescribed by said Secretary, of his acceptance of all the terms and conditions of this Act, and thereafter his lands or entry shall be subject to all of the provisions of this Act: *Provided*, That upon sufficient showing the Secretary of the Interior may, in his discretion, permit notice of acceptance of all the terms and conditions of this Act to be filed at any time after the time limit hereinbefore fixed for filing such acceptance shall have expired, conditioned, however, that where the applicant for such acceptance is in arrears

on construction charges, he shall at the time of acceptance pay such installments of the construction charge as he would have been required to pay had he accepted this Act within the time limit hereinabove fixed, plus the penalties that would have accrued had he so accepted, and such applicant shall thereafter be upon the same status that he would have been had he accepted the provisions of this Act within the time limit hereinabove fixed, and thereafter the lands or entry of any such persons so filing such notice of acceptance shall be subject to all the provisions of this Act." [39 Stat. L. 390.]

For the Act of Aug. 13, 1914, ch. 247, § 14, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 315; 9 Fed. Stat. Ann. (2d ed.) 1389.

An Act To promote the reclamation of arid lands.

[Act of August 11, 1916, ch. 319, 39 Stat. L. 506.]

[SEC. 1.] [Arid public lands — reclamation — irrigation.] That when in any State of the United States under the irrigation district laws of said State there has heretofore been organized and created or shall hereafter be organized and created any irrigation district for the purpose of irrigating the lands situated within said irrigation district, and in which irrigation district so created or to be created there shall be included any of the public lands of the United States, such public lands so situated in said irrigation district, when subject to entry, and entered lands within said irrigation district, for which no final certificates have been issued, which may be designated by the Secretary of the Interior in the approval by him of the map and plat of an irrigation district as provided in section three, are hereby made and declared to be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes, to the same extent and in the same manner in which the lands of a like character held under private ownership are or may be subject to said laws: *Provided*, That the United States and all persons legally holding unpatented lands under entry made under the public land laws of the United States are accorded all the rights, privileges, benefits, and exemptions given by said State laws to persons holding lands of a like character under private ownership, except as hereinafter otherwise provided: *Provided further*, That this Act shall not apply to any irrigation district comprising a majority acreage of unentered land. [39 Stat. L. 506.]

SEC. 2. [Apportionment of cost of irrigation canals, etc.—liens.] That the cost of constructing, acquiring, purchasing, or maintaining the canals, ditches, reservoirs, reservoir sites, water, water right, rights of way, or other property incurred in connection with any irrigation project under said irrigation district laws shall be equitably apportioned among lands held under private ownership, lands legally covered by unpatented entries, and unentered public lands included in said irrigation district. Officially certified lists of the amounts of charges assessed against the smallest legal subdivision of said lands shall be furnished to the register and receiver of

the land district within which the lands affected are located as soon as such charges are assessed; but nothing in this Act shall be construed as creating any obligation against the United States to pay any of said charges, assessments, or debts incurred.

That all charges legally assessed shall be a lien upon unentered lands and upon lands covered by unpatented entries included in said irrigation district; and said lien upon said land covered by unpatented entries may be enforced upon said unpatented lands by the sale thereof in the same manner and under the same proceeding whereby said assessments are enforced against lands held under private ownership: *Provided*, That in the case of entered unpatented lands the title or interest which such irrigation district may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to the following conditions and limitations: If such unpatented land be withdrawn under the Act of Congress of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as the reclamation Act, or subject to the provisions of said Act, then the interest which the district may convey by such tax proceedings or tax deed shall be subject to a prior lien reserved to the United States for all the unpaid charges authorized by the said Act of June seventeenth, nineteen hundred and two, but the holder of such tax deed or tax title resulting from such district tax shall be entitled to all the rights and privileges in the land included in such tax title or tax deed of an assignee under the provisions of the Act of Congress of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page five hundred and ninety-two), and upon submission to the United States land office of the district in which the land is located of satisfactory proof of such tax title, the name of the holder thereof shall be indorsed upon the records of such land office as entitled to the rights of one holding a complete and valid assignment under the said Act of June twenty-third, nineteen hundred and ten, and such person may at any time thereafter receive patent upon submitting satisfactory proof of the reclamation and irrigation required by the said Act of Congress of June seventeenth, nineteen hundred and two, and Acts amendatory thereto, and making the payments required by said Acts. [39 Stat. L. 507.]

For the Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

For the Act of June 23, 1910, ch. 357, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 319; 9 Fed. Stat. Ann. (2d ed.) 1376.

SEC. 3. [Liens — taxes and assessments.] That no unentered lands and no entered lands for which no final certificates have been issued shall be subject to the lien or liens herein contemplated until there shall have been submitted by said irrigation district to the Secretary of the Interior, and approved by him, a map or plat of said district and sufficient detailed engineering data to demonstrate to the satisfaction of the Secretary of the Interior the sufficiency of the water supply and the feasibility of the project, and which shall explain the plan or mode of irrigation in those irrigation districts where the irrigation works have not been constructed, and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, and which shall also show the source of water to be used for irrigation of land included in said

district: *Provided*, That the Secretary of the Interior may, upon the expiration of ten years from the date of his approval of said map and plan of any irrigation district, release from the lien authorized by this Act any unentered land or lands upon which final certificate has not issued, for which irrigation works have not been constructed and water of such district made available for the land: *Provided further*, That in those irrigation districts already organized and whose irrigation works have been constructed and are in operation as soon as a satisfactory map, plat, and plan shall have been approved by the Secretary of the Interior, as in this Act provided, such entered and unentered lands shall be subject to all district taxes and assessments theretofore actually levied against the lands in said district and in the same manner in which lands of a like character held under private ownership are subject to liens and assessments. [39 Stat. L. 507.]

SEC. 4. [Approval of district map or plat.] That upon the approval of the district map or plat as hereinbefore provided by the Secretary of the Interior the register and receiver will note said approval upon their records where any unentered or entered and unpatented lands are affected. [39 Stat. L. 508.]

SEC. 5. [Sale for taxes and assessments.] That no public lands which were unentered at the time any tax or assessment was levied against same by such irrigation district shall be sold for such taxes or assessments, but such tax or assessment shall be and continue a lien upon such lands, and not more than one hundred and sixty acres of such land shall be entered by any one person; and when such lands shall be applied for, after said approval by the Secretary of the Interior, under the homestead or desert-land laws of the United States the application shall be suspended for a period of thirty days to enable the applicant to present a certificate from the proper district or county officer showing that no unpaid district charges are due and delinquent against said land. [39 Stat. L. 508.]

SEC. 6. [Patents — subrogation to rights of purchaser — relinquishment of entered land.] That any entered but unpatented lands not subject to the reclamation Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), sold in the manner and for the purposes mentioned in this Act may be patented to the purchaser thereof or his assignee at any time after the expiration of the period of redemption allowed by law under which it may have been sold (no redemption having been made) upon the payment to the receiver of the local land office of the minimum price of \$1.25 per acre, or such other price as may be fixed by law for such lands, together with the usual fees and commissions charged in entries of like lands under the homestead laws, and upon a satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land; but the purchaser or his assignee shall, at the time of application for patent, have the qualification of a homestead entryman or desert-land entryman, and not more than one hundred and sixty acres of said land shall be patented to any one purchaser under the provisions of this Act.

These limitations shall not apply to sales to irrigation districts, but shall apply to purchasers from such irrigation districts of such lands bid in by said district.

That unless the purchaser or his assignee of such lands shall, within ninety days after the time for redemption has expired, pay to the proper receiver all fees and commissions and the purchase price to which the United States shall be entitled as provided for in this Act, any person having the qualification of a homestead entryman or a desert-land entryman may pay to the proper receiver, for not more than one hundred and sixty acres of said lands, for which payment has not been made, the unpaid purchase price, fees, and commissions to which the United States may be entitled; and upon satisfactory proof that he has paid to the purchaser at the tax sale, or his assignee or to the proper officer of the district for such purchaser or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

In any case where any tract of entered land lying within such approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall be required, in addition to the qualifications and requirements otherwise provided, to furnish satisfactory proof by certificate from the proper district or county officer that he has paid all charges then due to the district upon said land and also has paid to the proper district or county officer for the holder or holders of any tax certificates, delinquency certificates, or other proper evidence of purchase at tax sale the amount for which the said land was sold at tax sale, together with the interest and penalties thereon provided by law. [39 Stat. L. 508.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 7. [Notices — hearing by petition, etc. — redemption.] That all notices required by the irrigation district laws mentioned in this act shall, as soon as such notices are issued, be delivered to the register and receiver of the proper land office in cases where unpatented lands are affected thereby, and to the entryman whose unpatented lands are included therein, and the United States and such entryman shall be given the same rights to be heard by petition, answer, remonstrance, appeal, or otherwise as are given to persons holding lands in private ownership, and all entrymen shall be given the same rights of redemption as are given to the owners of lands held in private ownership. [39 Stat. L. 509.]

SEC. 8. [Money received from sale of public lands — disposition.] That all moneys derived by the United States from the sale of public lands herein referred to shall be paid into such funds and applied as provided by law for the disposal of the proceeds from the sale of public lands. [39 Stat. L. 509.]

An Act To amend section one of the Act of August ninth, nineteen hundred and twelve, providing for patents on reclamation entries, and for other purposes.

[*Act of Feb. 15, 1917, ch. 71, 39 Stat. L. 920.*]

[Irrigation Act — patents to homesteaders — water-right certificates — payment — former Act amended.] That the proviso to section one of the Act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes, page two hundred and sixty-five), entitled "An Act providing for patents on reclamation entries, and for other purposes," be amended to read as follows:

"*Provided*, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate." [39 Stat. L. 920.]

For the Act of Aug. 9, 1912, ch. 278, § 1, amended by the text, see 1914 Supp. Fed. Stat. Ann. 421; 9 Fed. Stat. Ann. (2d ed.) 1383.

[SEC. 1.] [Reclamation — reimbursements of moneys advanced — application of moneys refunded, etc.— former Act amended.] * * *
The Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes, page eight hundred and thirty-five), is amended to provide that reimbursement of the moneys advanced under the provisions of that Act shall be made by transferring annually the sum of \$1,000,000 from the reclamation fund to the general funds in the Treasury, beginning July first, nineteen hundred and twenty, and continuing until full reimbursement has been made;

All moneys heretofore or hereafter refunded or received in connection with operations under the reclamation law, except repayments of construction and operation and maintenance charges, shall be a credit to the appropriation for the project or operation from or on account of which the collection is made and shall be available for expenditure in like manner as if said sum had been specifically appropriated for said project or operation.
[40 Stat. L. 149.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. 27.

For the Act of June 25, 1910, ch. 407, amended by the text, see 1912 Supp. Fed. Stat. Ann. 414; 9 Fed. Stat. Ann. (2d ed.) 1377.

SEC. 11. ["Reclamation Act" — suspension of provision relating to residence.] That the Secretary of the Interior is hereby authorized, in his discretion, to suspend during the continuance of this Act that provision of the Act known as the "Reclamation Act" requiring residence upon

lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. [40 Stat. L. 276.]

The foregoing section 11 is from an Act of Aug. 10, 1917, ch. 52, entitled "An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products." The entire Act is set out as referred to in AGRICULTURE, *ante*, p. 44, and section 12 there given determines how long the Act is to remain effective and should be read in connection with this section.

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

[SEC. 1.] [Reclamation Service — purchase of supplies — procurement of services — open market.] * * * Hereafter the purchase of supplies and the procurement of services for the Reclamation Service may be made in open market in the manner common among business men, without advertising and formal contract, when the aggregate of the amount required does not exceed \$50, and when, in the opinion of the Director of the Reclamation Service, such limitations of amount are not designed to evade the purchase of supplies and the procurement of services under advertising and formal contract, and equally or more advantageous terms can thereby be secured. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

WATERWAYS COMMISSION

See RIVERS, HARBORS, AND CANALS.

WEATHER

Act of March 4, 1917, ch. 179, 1072.

Weather Bureau — Printing, 1072.

[Weather Bureau — printing.] * * * That no printing shall be done by the Weather Bureau, that in the judgment of the Secretary of Agriculture, can be done at the Government Printing Office without impairing the service of said bureau. [39 Stat. L. 1137.]

This is from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

An identical provision appeared in the like Act of Aug. 11, 1916, ch. 313, § 1, 39 Stat. L. 448.

WEIGHTS AND MEASURES

Act of Aug. 23, 1916, ch. 396, 1073.

Sec. 1. Lime Barrels — Standardization, 1073.

2. Marking, 1073.

3. Sales in Fractional Parts of Standard Barrel, 1073.

4. Enforcement of Act — Rules and Regulations, 1073.

5. Failure to Mark Barrels or Containers — Penalty, 1074.

6. Duty of District Attorney, 1074.

7. Act When Effective, 1074.

CROSS-REFERENCE

See *AGRICULTURE*.

An Act To standardize lime barrels.

[*Act of Aug. 23, 1916, ch. 396, 39 Stat. L. 530.*]

[SEC. 1.] [**Lime barrels — standardization.**] That there is hereby established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty pounds, net weight. [*39 Stat. L. 530.*]

SEC. 2. [**Marking.**] That it shall be unlawful for any person to sell or offer for sale lime imported in barrels from a foreign country, or to sell or offer for sale lime in barrels for shipment from any State or Territory or the District of Columbia, to any other State or Territory or the District of Columbia, unless there shall be stenciled or otherwise clearly marked on one or both heads of the small barrel the figures "180 lbs. net" and of the large barrel the figures "280 lbs. net" before the importation or shipment, and on either barrel in addition the name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported. [*39 Stat. L. 530.*]

SEC. 3. [**Sales in fractional parts of standard barrel.**] When lime is sold in interstate or foreign commerce in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported. [*39 Stat. L. 530.*]

SEC. 4. [**Enforcement of Act — rules and regulations.**] That rules and regulations for the enforcement of this Act, not inconsistent with the provisions of the Act, shall be made by the Director of the Bureau of Standards and approved by the Secretary of Commerce, and that such rules and regulations shall include reasonable variations or tolerances which may be allowed. [*39 Stat. L. 531.*]

SEC. 5. [**Failure to mark barrels or containers — penalty.**] That it shall be unlawful to pack, sell, or offer for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any barrels or other containers of lime which are not marked as provided in sections two and three of this Act, or to sell, charge for, or purport to deliver from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of this Act; and any person guilty of a violation of the provisions of this Act shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding \$100. [*39 Stat. L. 531.*]

SEC. 6. [**Duty of district attorney.**] That it shall be the duty of each district attorney, to whom satisfactory evidence of any violation of this Act is presented, to cause appropriate proceedings to be commenced and prosecuted in the United States court having jurisdiction of such offense: *Provided, however,* That the penal provisions of this Act shall not take effect until January first, nineteen hundred and seventeen. [*39 Stat. L. 531.*]

SEC. 7. [**Act when effective.**] That this Act shall be in force and effect from and after its passage. [*39 Stat. L. 531.*]

WEST INDIAN ISLANDS

Act of March 3, 1917, ch. 171, 1074.

- Sec. 1. Islands Acquired from Denmark — Temporary Government — Officers — Appointment — Compensation, 1074.*
2. Laws Applicable — Courts — Jurisdiction — Appeals, 1075.
3. Duties — Internal Revenue Taxes — Goods Coming into United States, 1075.
4. Existing Laws Imposing Taxes — Continuance, 1076.
5. Disposition of Duties and Taxes Collected, 1076.
6. Appropriation for Various Purposes, 1076.
7. Purchase Price of Islands — Appropriation — Place of Payment, 1076.
8. When Act Becomes Effective, 1077.

An Act To provide a temporary government for the West Indian Islands acquired by the United States from Denmark by the convention entered into between said countries on the fourth day of August, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen, and for other purposes.

[*Act of March 3, 1917, ch. 171, 39 Stat. L. 1132.*]

[SEC. 1.] [**Islands acquired from Denmark — temporary government — officers — appointment — compensation.**] That, except as hereinafter

provided, all military, civil, and judicial powers necessary to govern the West Indian Islands acquired from Denmark shall be vested in a governor and such person or persons as the President may appoint, and shall be exercised in such manner as the President shall direct until Congress shall provide for the government of said islands: *Provided*, That the President may assign an officer of the Army or Navy to serve as such governor and perform the duties appertaining to said office: *And provided further*, That the governor of the said islands shall be appointed by and with the advice and consent of the Senate: *And provided further*, That the compensation of all persons appointed under this Act shall be fixed by the President.

For the terms of the convention between the United States and Denmark, mentioned in the title of this Act, see 39 Stat. L. 1706.

SEC. 2. [Laws applicable — courts — jurisdiction — appeals.] That until Congress shall otherwise provide, in so far as compatible with the changed sovereignty and not in conflict with the provisions of this Act, the laws regulating elections and the electoral franchise as set forth in the code of laws published at Amalienborg the sixth day of April, nineteen hundred and six, and the other local laws, in force and effect in said islands on the seventeenth day of January, nineteen hundred and seventeen, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party. In all cases arising in the said West Indian Islands and now reviewable by the courts of Denmark, writs of error and appeals shall be to the Circuit Court of Appeals for the Third Circuit, and, except as provided in sections two hundred and thirty-nine and two hundred and forty of the Judicial Code, the judgments, orders, and decrees of such court shall be final in all such cases. [39 Stat. L. 1132.]

Judicial notice will be taken of the laws in force in the West Indian Islands prior to their acquisition by the United States. Article STATUTES AND STATUTORY CONSTRUCTION, 1 Fed. Stat. Ann. p. xii; 1 Fed. Stat. Ann. (2d ed.) p. 21, § 12.

The Circuit Court of Appeals for the Third Circuit comprises the districts of Pennsylvania, New Jersey, and Delaware. See Judicial Code, § 116, 1912 Supp. Fed. Stat. Ann. 191; 5 Fed. Stat. Ann. (2d ed.) 599.

For Judicial Code, § 239, authorizing the Circuit Court of Appeals to certify questions to the Supreme Court for instruction, see 1912 Supp. Fed. Stat. Ann. 231; 5 Fed. Stat. Ann. (2d ed.) 838.

For Judicial Code, § 240, providing for certiorari from the Supreme Court to the Circuit Court of Appeals in cases otherwise final in the latter court, see 1912 Supp. Fed. Stat. Ann. 232; 5 Fed. Stat. Ann. (2d ed.) 854.

SEC. 3. [Duties — internal revenue taxes — goods coming into United States.] That on and after the passage of this Act there shall be levied, collected, and paid upon all articles coming into the United States or its possessions, from the West Indian Islands ceded to the United States by Denmark, the rates of duty and internal-revenue taxes which are required

to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product of, or manufactured in such islands from materials the growth or product of such islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from such islands shall hereafter be admitted free of duty. [39 Stat. L. 1133.]

SEC. 4. [Existing laws imposing taxes — continuance.] That until Congress shall otherwise provide all laws now imposing taxes in the said West Indian Islands, including the customs laws and regulations, shall, in so far as compatible with the changed sovereignty and not otherwise herein provided, continue in force and effect, except that articles of growth, product, or manufacture of the United States shall be admitted there free of duty: *Provided*, That upon exportation of sugar to any foreign country, or the shipment thereof to the United States or any of its possessions, there shall be levied, collected, and paid thereon an export duty of \$8 per ton of two thousand pounds irrespective of polariscope test, in lieu of any export tax now required by law. [39 Stat. L. 1133.]

SEC. 5. [Disposition of duties and taxes collected.] That the duties and taxes collected in pursuance of this Act shall not be covered into the general fund of the Treasury of the United States, but shall be used and expended for the government and benefit of said islands under such rules and regulations as the President may prescribe. [39 Stat. L. 1133.]

SEC. 6. [Appropriation for various purposes.] That for the purpose of taking over and occupying said islands and of carrying this Act into effect and to meet any deficit in the revenues of the said islands resulting from the provisions of this Act the sum of \$100,000 is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States. [39 Stat. L. 1133.]

SEC. 7. [Purchase price of Islands — appropriation — place of payment.] That the sum of \$25,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid in the city of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive said money, in full consideration of the cession of the Danish West Indian Islands to the United States made by the convention between the United States of America and His Majesty the King of Denmark entered into August fourth, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen. [39 Stat. L. 1133.]

For the terms of the Convention between the United States and Denmark, mentioned in this section, see 39 Stat. L. 1706.

SEC. 8. [**When Act becomes effective.**] That this Act, with the exception of section seven, shall be in force and effect and become operative immediately upon the payment by the United States of said sum of \$25,000,000. The fact and date of such payment shall thereupon be made public by a proclamation issued by the President and published in the said Danish West Indian Islands and in the United States. Section seven shall become immediately effective and the appropriation thereby provided for shall be immediately available. [*39 Stat. L. 1133.*]

SUPPLEMENTAL NOTES

AGRICULTURE

1914 Supp., p. 7, sec. 7.

Potato diseases.—In *Daigle v. U. S.*, (C. C. A. 1st Cir. 1916) 237 Fed. 159, 150 C. C. A. 305, the facts showed that the Secretary of Agriculture by virtue of the authority conferred by this section prohibited the importation of the common potato from the Dominion of Canada and certain other countries because of the prevalence of potato diseases, and that this potato quarantine was set up as good ground for the seizure of potatoes which had been imported from Canada to Maine. The libel, however, was held insufficient to make such ground available.

"Plant product" as including lumber.—In *Boston, etc., R. Co. v. U. S.*, (C. C. A. 1st Cir. 1917) 246 Fed. 440, 158 C. C. A. 504, it was held that the words "plant product" did not include lumber.

1914 Supp., p. 9, sec. 10.

Necessity that information be sworn to.—Where no warrant of arrest is asked for the information need not be

sworn to. *U. S. v. Adams Express Co.*, (D. C. Mass. 1915) 230 Fed. 531.

Sufficiency of information.—In *U. S. v. Adams Express Co.*, (D. C. Mass. 1915) 230 Fed. 531, the information was brought under section 8 of this Act which authorized the Secretary of Agriculture to establish, by regulations to be made by him from time to time, quarantine boundaries against dangerous plant diseases and insect pests, and forbid common carriers to receive for transportation goods covered by such regulations unless such goods had been inspected and the package containing them was certified by the proper officers. The information alleged that the defendant did receive for such transportation nursery stock which had not been inspected and which bore no certificate as required by the Act, and that the defendant knew that the box which it received for transportation, and which bore no certificate, contained nursery stock. The information was demurred to and there was also a motion to quash. The demurrer was sustained.

ALASKA

Vol. I, p. 38, sec. 8. [*Persons in possession, etc.*]

Abandonment of possessory right.—A claim to lands on the ground of alleged actual and continuous possession cannot be maintained under this section where there has been an abandonment of such lands, and they have in consequence become vacant, unused, unoccupied, unappropriated land of the United States. *Pacific Coast Co. v. James*, (C. C. A. 9th Cir. 1916) 234 Fed. 595, 148 C. C. A. 361.

Right to convey.—This act, in recognizing the possessory rights of the Indians, did not deny to them the power to convey to others their right of occupation. *Worthen Lumber Mills v. Alaska Juneau Gold Min. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 966, 144 C. C. A. 248.

Vol. I, p. 50, sec. 10. [*Roadway parallel to shore reserved.*]

Roadway through reserved lands.—This section refers to a roadway through

the reserved land previously described, and not other lands granted in fee under the homestead laws. *Worthen Lumber Mills v. Alaska Juneau Gold Min. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 966, 144 C. C. A. 248.

Vol. I, p. 54, sec. 15.

Reservation of adjacent waters.—The reservation by Presidential proclamation of the waters surrounding Annette Island for the use and benefit of the natives is in accord with the practical purpose Congress had in view when it made the original reservation. *Alaska Pacific Fisheries v. U. S.*, (C. C. A. 9th Cir. 1917) 240 Fed. 274, 153 C. C. A. 200.

Vol. I, p. 101, sec. 267.

Equitable judgments.—The provision of this section that, on judgments in actions at law, the clerk shall issue execution, is by virtue of section 382 of this Code, made applicable in equitable judgments, so far as the nature of the judgment may require or admit. *Lesamis v. Greenburg*, (C. C. A.

9th Cir. 1915) 225 Fed. 449, 140 C. C. A. 481.

Vol. I, p. 126, sec. 382.

Practice in equitable judgments.—This section makes the provision of section 267 of this Code, that on judgments in actions at law the clerk shall issue the execution, applicable in equitable judgments, so far as the nature of the judgment may require or admit. *Lesamis v. Greenberg*, (C. C. A. 9th Cir. 1915) 225 Fed. 449, 140 C. C. A. 481.

Vol. I, p. 148, sec. 508.

Stay of proceedings pending appeal.—Where under a judgment property is directed to be sold and an appeal from the judgment is taken to the Federal Circuit Court of Appeals, the court decreeing the sale will not ordinarily stay execution or postpone the sale pending hearing on appeal, unless a supersedeas has been issued. *Lesamis v. Greenberg*, (C. C. A. 9th Cir. 1915) 225 Fed. 449, 140 C. C. A. 481.

Vol. I, p. 303, sec. 2.

Operation and effect of legislation.—The adoption by Congress of this act to define and punish crimes in the District of Alaska does not make the offenses therein defined offenses against the United States. *Ex parte Krause*, (W. D. Wash. 1915) 228 Fed. 547.

Vol. X, p. 6, sec. 3.

Repeal.—This section regarding the powers of town councils was repealed by implication by the Act of April 28, 1904, ch. 1778, 33 Stat. L. 529, 10 Fed. Stat. Annot. 16. *Guidoni v. Wheeler*, (C. C. A. 9th Cir. 1916) 230 Fed. 93, 144 C. C. A. 391.

Vol. X, p. 26.

Construction.—The provision, that "along such shore a space of at least eighty rods shall be reserved from entry between all such claims," means plainly that a space of at least eighty rods shall be reserved from entry along the shore of the navigable water between claims along such shore. *U. S. v. Poland*, (C. C. A. 9th Cir. 1916) 231 Fed. 810, 145 C. C. A. 630.

Vol. X, p. 27, sec. 1.

Validity of location.—This statute contemplates as a basis of a valid location the opening and development of a producing mine of coal. Work performed upon a claim merely for prospecting purposes does not fulfill the requirement. *U. S. v. Lane*, (1917) 46 App. Cas. (D. C.) 443.

1909 Supp., p. 19.

Effect on occupation and alienation.—This Act, authorizing the Secretary of the Interior in his discretion to allot non-mineral land to any Indian or Eskimo as a homestead for the allottee and his heirs in perpetuity, which "shall be inalienable and nontaxable until otherwise provided by Congress" does not of its own force terminate the rights of occupation which the Indian had prior thereto, or place any bar upon the alienation thereof. *Worthen Lumber Mills v. Alaska Juneau Gold Min. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 966, 144 C. C. A. 248.

1909 Supp., p. 20, sec. 1.

Additional license taxes.—The territory of Alaska may impose additional license taxes, for the purpose of revenue. *Alaska Pacific Fisheries v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 52, 149 C. C. A. 262; *Hoonah Packing Co. v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 61, 149 C. C. A. 271. See also *Alaska Salmon Co. v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 62, 149 C. C. A. 272; *Alaska Pacific Fisheries v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 70, 149 C. C. A. 280.

1909 Supp., p. 22, sec. 5.

Release of obstructions.—The provision of this section requiring that 25 feet of the webbing or net of the heart of traps shall be lifted or lowered so as to permit the free passage of salmon and other fishes is not merely directory. It is a plain command of the statute and disobedience thereto is a crime under the Act. *Thlinket Packing Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 109, 149 C. C. A. 319.

1909 Supp., p. 24, sec. 13.

Indictment.—An indictment charging a violation of section 5 of this Act, respecting the release of obstructions, need not allege that the accused was actually fishing or taking fish. An allegation that the accused "did unlawfully and wrongfully maintain and operate for fishing a certain trap" is sufficient. *Thlinket Packing Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 109, 149 C. C. A. 319.

1914 Supp., p. 14, sec. 2.

Time of recording power of attorney.—A power of attorney, authorizing the location of placer mining claims by one for another, must be recorded before any step in the matter of such location can be taken. *Sutherland v. Purdy*, (C. C. A. 9th Cir. 1916) 234 Fed. 600, 148 C. C. A. 366, *overruling dicta* on this point in *Cloninger v. Finlaison*, (C. C. A. 9th Cir. 1916) 230 Fed. 98, 144 C. C. A. 396.

1914 Supp., p. 21, sec. 9.

Purpose of exemption clause.—See *Alaska Northern R. Co. v. Municipality of Seward*, (C. C. A. 9th Cir. 1916) 229 Fed. 667, 144 C. C. A. 77.

Power of municipality to levy tax on railway.—Authorizing, as Congress did, the legislature to levy taxes for territorial purposes up to 1 per centum upon the assessed valuation of property situated within the territory in any one year, and authorizing any incorporated town or municipality thereof to levy any

tax for any purpose up to 2 per centum of the assessed valuation of property within the town in any one year, Congress expressly declared that it reserved to itself the exclusive power for five years to fix and impose any tax upon railways or railway property in Alaska. The necessary effect of this reservation is to prohibit the levy of any tax upon such property during the specified period by any other power. *Alaska Northern R. Co. v. Municipality of Seward*, (C. C. A. 9th Cir. 1916) 229 Fed. 667, 144 C. C. A. 77.

ANIMALS**Vol. 1, p. 443, sec. 7.**

Quarantine regulations.—The Secretary of Agriculture has full authority to make regulations designating ports of import and quarantine and inspection stations, and requiring that cattle, sheep and other ruminants and swine imported into the United States, which are subject to both quarantine and inspection, must be entered at such ports of entry and inspected by an inspector of the Bureau of Animal Industry. *Estes v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 818, 142 C. C. A. 342.

Vol. X, p. 34, sec. 1.

Power of Secretary to prescribe regulations.—To accomplish the purposes of this statute, the Secretary of Agriculture is authorized to make such regulations and take such measures as may be deemed proper. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1916) 235 Fed. 961. See also *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

Vol. X, p. 35, sec. 2.

Quarantine regulations.—The Secretary of Agriculture has full authority to make regulations designating ports of import and quarantine and inspection stations and requiring that horses, cattle, sheep and other ruminants, and swine imported into the United States, which are subject to both quarantine and inspection, must be entered at such ports of entry and inspected by an inspector of the Bureau of Animal Industry. *Estes v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 818, 142 C. C. A. 342.

Vol. X, p. 36, sec. 4.

State regulations.—When the subject of transportation of live stock from one state to another is taken under direct

national supervision and a system devised by which diseased stock may be excluded from interstate commerce, any state regulations in respect of such matters will cease to have any force. The acts of Congress and the regulations thereunder will alone control. *Pecos, etc., R. Co. v. Hall*, (Tex. Civ. App. 1916) 189 S. W. 535.

1909 Supp., p. 43, sec. 1.

Application of statute—Shipment originating in foreign country.—That the point of origin of shipment was in a foreign country is immaterial, when the period of confinement while passing through the United States exceeds the statutory limitation. Regardless of the points of origin or destination of the shipment the statute applies whenever its violation occurs within the jurisdiction of the federal government. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 229 Fed. 116, 143 C. C. A. 392.

Liability of connecting carrier for delay of initial carrier.—Where the initial carrier has incurred liability for the penalty, such liability is not transferred to the connecting carrier with the delivery of the stock. *U. S. v. Chicago, etc., R. Co.*, (N. D. Ia. 1916) 234 Fed. 386.

Sufficiency of request extending time.—An indorsement, by a shipper or by a member of a firm making a shipment, in his own handwriting on the blank margin of the bill of lading covering one of the shipments, is sufficient to bring the shipment in question within the terms of the proviso. *Norfolk, etc., R. Co. v. Steele*, (1915) 117 Va. 788, 86 S. E. 124.

Equipment of stock pens.—Stock pens in open corrals in the sand, wholly without shade or covering of any kind, held to be unfit and not properly equipped for rest. *Southern Pac. Co. v. Stewart*, (C. C. A. 9th Cir. 1916) 233 Fed. 956, 147 C. C. A. 630.

Defenses — In general.—Any defense to an action for the penalty for confinement of cattle in violation of this law must rest upon one of two grounds. One is the absence of a *corpus delicti*, that is, any confinement not due to storms or accidents, etc. If such fact is present, the defendant is not liable because no offense has been established. The other is that the offense, although made out to exist and to have been committed by the defendant, was committed unwittingly. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 238 Fed. 428.

Compliance with statute as defense to delay in delivery.—See *St. Louis, etc., R. Co. v. Shepherd*, (1916) 240 U. S. 240, 36 S. Ct. 274, 60 U. S. (L. ed.) 622.

Accident as defense to delay.—Confinement exceeding the maximum thirty-six-hour period necessitated by accidents happening near final destination is excused where, in the exercise of ordinary care, prudence, and foresight the carrier reasonably could have expected that, following the determined schedule, the containing car would have reached its destination or some unloading place within the prescribed time, and thereafter exercised the diligence and foresight which prudent men, experienced in such matters, would have adopted to prevent accidents and delays, and to overcome the effect of any that might happen,—with an honest purpose always to secure unloading within the lawful period. *Chicago, etc., R. Co. v. U. S.*, 246 U. S. 512, 62 U. S. (L. ed.) 434, *reversing* (C. C. A. 7th Cir. 1916) 234 Fed. 268, 148 C. C. A. 170.

An indistinct notation upon a bill of lading of the time live stock was loaded on the cars is not a defense to an action under this section. It can be considered, if at all, only in mitigation. *U. S. v. Sioux City, etc., R. Co.*, (N. D. Ia. 1916) 234 Fed. 663.

Civil action for damages.—A shipper of live stock, furnished by an interstate carrier with transportation under a contract to care for, feed, water, and unload his own stock when necessary, who actually accompanies his shipment on the train in which they are transported, and consents to and participates with the carrier in a violation of the federal statutes relating to such shipment, is not in a position to maintain a civil action for damages against such carrier, alleged to have been caused by such violation. *Fluckinger v. Chicago, etc., R. Co.*, (1915) 99 Neb. 6, 154 N. W. 865.

1909 Supp., p. 45, sec. 3.

"Wilfully."—The term "wilfully," as employed in this act, does not imply deliberate intent to do injury to the stock or to its owner. The jury may conclude that the violation was wilful, if from the

evidence they find that the carrier in confining the stock beyond the statutory limit, manifested disregard of the law or indifference to its requirements. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1915) 229 Fed. 116, 143 C. C. A. 392.

The ultimate question of the wilfulness of the act of confinement must be determined from the evidentiary facts, and it makes no difference that such facts appear by stipulation of the parties rather than through oral or documentary evidence. *Chicago, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 234 Fed. 272, 148 C. C. A. 174.

Construction of proviso — Question for court.—The proviso in this section deals wholly with the structure of the car. If the car is such that "they can and do have proper space and opportunity to rest," then the requirement in regard to unloading does not apply. It is for the court to say what Congress meant by this language. That question cannot be left to the jury. Otherwise there would be as many rules as there are verdicts. *Northern Pac. R. Co. v. Finch*, (D. C. N. D. 1915) 225 Fed. 676.

"Opportunity to rest."—The phrase "opportunity to rest" means opportunity to lie down. *Northern Pac. R. Co. v. Finch*, (D. C. N. D. 1915) 225 Fed. 676.

Burden of bringing case within proviso.—The government need not negative the excuse embodied in the proviso of this section. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 229 Fed. 116, 143 C. C. A. 392.

1909 Supp., p. 46, sec. 1.

Validity of statute.—This statute is constitutional. *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

Purpose of law.—The entire meat inspection law was, as distinctly indicated in it, to prevent the sale of food which is unsound, unwholesome or otherwise unfit for human use or misbranded. It was not the design of Congress to provide standards of quality except to prohibit the sale of food which was unsound, unwholesome or otherwise unfit for human use and secure true branding. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, *reversing* (E. D. Mo. 1913) 204 Fed. 120. See further *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113.

Relation to Oleomargarine Act.—This statute applies to oleomargarine dealers notwithstanding the Oleomargarine Act of May 9, 1902, ch. 784 (title Food and Drugs, vol. 3, Fed. Stat. Annot. p. 127). *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Meat food product.—Oleo oil is a meat food product.—It is, without being refined or undergoing any chemical change, the principal ingredient of oleomargarine. In manufacturing this substitute for butter, oleo oil is mechanically mixed with other substances. What the oleo oil was before mixing, it continues to be afterward; the mixture is fit for human consumption and is largely used for food. *Totten v. Pittsburgh Melting Co.*, (C. C. A. 3d Cir. 1916) 232 Fed. 694, 146 C. C. A. 620, *reversing* (W. D. Pa. 1916) 229 Fed. 214.

Oleomargarine is a meat food product and its manufacture comes within the language of this act. See further the preceding note, *Relation to Oleomargarine Act*. *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Authority to make regulations.—While it is true that Congress cannot delegate its legitimate powers, it can, nevertheless, delegate authority to the proper administrative or executive officer to make administrative rules, violations of which may be punished as public offenses where the act of legislation which delegates the authority ordains that this be done. *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441; *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1916) 235 Fed. 961.

Finality of Secretary's decision.—It is within the discretion of the Secretary of Agriculture to find whether meat products are unsound, unhealthful or unwholesome. But his finding is not conclusive upon the courts. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113, *reversing* (E. D. Mo. 1916) 231 Fed. 779. See also *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, *reversing* (E. D. Mo. 1913) 204 Fed. 120.

1909 Supp., p. 47. [*Inspectors to be appointed at canning, etc., establishments.*]

Inspection by packer.—Under the rules and regulations prescribed by the Secretary of Agriculture, the packer is forbidden to make an inspection prior to the government's inspection, in the manner in which such inspection is made; but there is nothing to indicate that a subsequent independent inspection is forbidden or could not be made by the packer. And where he fails to make an inspection for himself in order to determine whether the meat sold by him is fit for food, the inspection by the government will not relieve him from civil liability for damage. *Ca-*

tani v. Swift, (1915) 251 Pa. St. 52, 95 Atl. 931, L. R. A. 1917B 1272.

1909 Supp., p. 50. [*Penalty for violations.*]

Civil liability.—The provisions herein for meat inspection by government officers do not relieve the packer from liability for damages where he has made no inspection nor taken any steps to ascertain for himself whether the meat sold by him is fit for food. The common-law duty to sell only wholesome food still remains, and the burden of discharging this duty has not been shifted to government inspectors. So where the jury having found that the death of plaintiff's husband was the result of eating meat packed by defendant which was affected by a disease which the evidence showed was discoverable by proper inspection, it was held that the burden was on defendant to show fulfillment of its duty, which burden was not met by merely proving inspection by the United States government inspectors. *Catani v. Swift*, (1915) 251 Pa. St. 52, 95 Atl. 931, L. R. A. 1917B 1272.

1909 Supp., p. 50. [*Appointment of inspectors — rules and regulations.*]

The Secretary of Agriculture has no power to adopt and enforce a regulation which prohibits the making of a compound that is sound, healthful, wholesome, and free from dyes, chemicals, preservatives or ingredients which render such compound unfit for human food. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, holding that the Secretary of Agriculture had no power to prohibit manufacture and sale of sausage and cereal where the cereal was in excess of 2 per cent., *reversing* (E. D. Mo. 1913) 204 Fed. 120. See also *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113, *reversing* (E. D. Mo. 1916) 231 Fed. 779.

1909 Supp., p. 51. [*Exceptions to farmers, retailers, etc.*]

Application of first proviso.—This proviso does not fix responsibility for the condition of food subsequent to its inspection. So, one who delivers and offers for transportation in interstate commerce an unwholesome food product which is marked "inspected" by label as provided in this Act, is not within the proviso. *U. S. v. Northwestern Fisheries Co.*, (W. D. Wash. 1915) 224 Fed. 274.

BAIL AND RECOGNIZANCES

Vol. I, p. 521, sec. 1015.

Declaratory of common law.—The power conferred by Congress to bail offenders against the criminal laws of the United States is declaratory of the power inherent at the common law. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Vol. I, p. 523, sec. 1020.

Petition—Pleading.—An allegation in the petition for the remission of the penalty, "that there has been no wilful default" of the defendant or his sureties is a sufficient averment of that fact. Allegations of the evidence that the default was not wilful are not necessary. *U. S. v.*

Smart, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

Verification.—The verification of the petition by a person who put up the money to induce the sureties to sign the recognizance, and who is therefore the real party in interest, is sufficient. *U. S. v. Smart*, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

Time for application for remission.—The penalty may be remitted after final judgment, after the expiration of the term in which the default was adjudged and after the expiration of the term in which the final judgment was entered. *U. S. v. Smart*, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

BANKRUPTCY

1912 Supp., p. 464. [Act of June 25, 1910.]

General purposes of the Act.—The purpose of the Bankruptcy Act is to establish a uniform system of bankruptcy throughout the United States, and place the bankrupt's property, wherever situate, under the control of the court, for the purpose of determining the status of the bankrupt and the settlement and distribution of such estate. *West v. Empire L. Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

Suspension of state insolvency laws.—The bankruptcy law is paramount. *Hawkins v. Dannenberg Co.*, (S. D. Ga. 1916) 234 Fed. 752.

Where the jurisdiction of the federal bankruptcy court is invoked, the state insolvency laws are suspended. *Shaw v. Standard Piano Co.*, (N. J. 1917) 100 Atl. 167.

1912 Supp., p. 465, sec. 1a (9).

Attorney.—This court is of the opinion that the practice which has grown up, and which seems to be recognized by the Act itself, requiring attorneys at law duly admitted, who appear for a creditor and desire to vote for trustee, to have specific written authority, is a wise and necessary rule of practice. *In re Capitol Trading Co.*, (D. C. N. D. N. Y. 1916) 229 Fed. 806. See also *In re H. E. Ploof Machinery Co.*, (D. C. S. D. Fla. 1916) 243 Fed. 421.

1912 Supp., p. 466, sec. 1a (15).

Capital stock.—This definition indicates that the capital stock of a corporation is not to be taken into account in determining whether a corporation is insolvent. Capital stock is a liability, but in no sense can it be said to be a corporate debt to be reckoned with in ascertaining whether the company is insolvent. *Teipel v. Coleman*, (D. C. Pa. 1914) 229 Fed. 300.

1912 Supp., p. 468, sec. 1a (24).

Porto Rico is included in the word states, as here used. *In re Vidal*, (C. C. A. 1st Cir. 1916) 233 Fed. 733.

1912 Supp., p. 469, sec. 2. [Act of June 25, 1910.]

Jurisdiction paramount and exclusive.—The United States District Courts are by the Bankruptcy Act created into bankruptcy courts, and their jurisdiction as such is limited. All the courts of the United States are of limited jurisdiction. They possess only such powers as are either expressly or by necessary implication conferred upon them. Their jurisdiction and powers are derived from the Constitution and the acts of Congress passed in pursuance thereof. *In re Hollins*, (C. C. A. 2d Cir. 1916) 229 Fed. 349, 143 C. C. A. 469.

But such jurisdiction is unlimited in respect of its power over bankruptcy proceedings. The jurisdiction of a court of bankruptcy attaches from the time of the

filing of the petition in bankruptcy, and the effect of the filing of the petition is to place all of the property of the bankrupt, not in the possession of adverse claimants, in the legal custody and under the exclusive control of the court of bankruptcy. After the petition has been filed no other court can make any order, or decree, which will deprive the court of bankruptcy of its exclusive control over the administration of the bankrupt's property. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

The jurisdiction of the bankruptcy court is intended to be exclusive of all other courts, and such proceedings include all matters of administration and the determining of rights between contending parties with relation to the estate upon a fund in the custody of the courts. *Gibbons v. Dexter Horton Trust, etc., Bank*, (W. D. Wash. 1915) 225 Fed. 424.

It is the general rule that the jurisdiction of a federal court of bankruptcy over the administration of the affairs of insolvent corporations is exclusive and paramount. *Commercial Trust, etc., Bank v. Busch-Grace Produce Co.*, (C. C. A. 6th Cir. 1916) 228 Fed. 300, 142 C. C. A. 592.

A bill in equity will not be entertained for the purpose of adjudicating any matter or reviewing any proceeding in the court of administration in the bankruptcy court. *Gibbons v. Dexter Horton Trust, etc., Bank*, (W. D. Wash. 1915) 225 Fed. 424.

Territorial jurisdiction.—Where the necessary parties are before a court of equity, it is immaterial that the subject matter of the controversy, whether real or personal property, is beyond the territorial jurisdiction of the court. In such case the power exists to compel a defendant to do all things necessary which he could do voluntarily to give full effect to the decree against him. Obedience to the decrees so made is enforced by means of process against the person. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Equitable jurisdiction.—The bankruptcy court is a court of equity and, controlled by the statute, may do equity guided by the well-defined and established principles of equity jurisprudence. It does not always require actual and intentional fraud to afford a remedy in equity. Implied fraud or constructive fraud growing out of both representations and the concealment of or failure to disclose material facts, many times is ground for equitable relief. *In re Syracuse Gardens Co.*, (N. D. N. Y. 1916) 231 Fed. 284.

Appointment of special master.—A court in bankruptcy is a court of equity and has the powers of a court of equity, and this carries with it the power of appointing a special master to take evidence in aid of the court, and these special masters

may be standing masters in chancery or appointed pro hac vice in particular cases. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

1912 Supp., p. 470, sec. 2 (1).

Jurisdiction as dependent on residence, domicile or place of business.—See *Finn v. Carolina Portland Cement Co.*, (C. C. A. 5th Cir. 1916) 232 Fed. 815, 147 C. C. A. 9.

Partnership.—See *In re Gurler*, (N. D. Ia. 1916) 232 Fed. 1016.

Traveling salesman.—In the case of a traveling salesman whose only compensation consists of a commission on sales, and who spends over one-half of his time on the road it has been held that he does not have a "place of business," within the meaning of this section, at the place where he spends the remainder of his time so as to confer jurisdiction on the federal court in the latter place. *In re Price*, (S. D. N. Y. 1916) 231 Fed. 1001.

Corporation's principal place of business.—*Question of fact.*—The question as to where the principal place of business of a corporation is situated is determined purely by the facts, and not by intentions of the corporate authorities or recitals in the charter. *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 228 Fed. 984.

The locus of the principal place of business of a corporation is a question of fact and the burden of proving it rests on the petitioning creditors. *In re Pennington*, (W. D. Ky. 1915) 228 Fed. 388.

Concurrent jurisdiction.—Where a corporation has its domicile in one district and its principal place of business in another the court of either district has jurisdiction. *In re New Era Novelty Co.*, (D. C. N. J. 1916) 241 Fed. 298.

Jurisdiction in case of aliens.—As to jurisdiction where the alleged bankrupt is an alien or his creditors are aliens, see *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Objections to jurisdiction.—The fact that a bankrupt appears by filing demurrer to the petition of the creditors, going to the merits of the controversy without objecting to the jurisdiction does not preclude him from thereafter timely asserting the want of jurisdiction. *Finn v. Carolina Portland Cement Co.*, (C. C. A. 5th Cir. 1916) 232 Fed. 815, 147 C. C. A. 9.

"Property within their jurisdiction."—Determining what is included or meant by this phrase, see *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 228 Fed. 984.

1912 Supp., p. 472, sec. 2 (2).

Jurisdiction of court.—Generally speaking, the jurisdiction of courts of bankruptcy in the administration of bankrupt estates extends "to all matters of bank-

ruptcy without limitation. It is coextensive with the United States." It knows no state or district boundaries. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

The rule which gives the bankruptcy court exclusive jurisdiction to determine claims to property in its custody is not limited to actual possession, but extends to constructive possession as well, including property held not only by but for the bankrupt. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338. See also *Nisbet v. Federal Title, etc., Co.*, (C. C. A. 8th Cir. 1915) 229 Fed. 644, 144 C. C. A. 54.

Conflicting and adverse claims.—As to property within the custody of the bankruptcy court its exclusive jurisdiction over the general administration of the bankrupt's estate carries with it exclusive authority to determine, not only the claims of creditors, but also adverse claims, whether by way of ownership or paramount liens. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Where the bankrupt has possession of the property, and such possession passes to the trustee, this possession gives to the bankruptcy court control of the res and authority to administer it; and of course authority to administer it includes the power to ascertain and determine all conflicting claims thereto, whether the claimants reside in the district where such bankruptcy proceeding is pending or in some other state. *In re Wegman Piano Co.*, (N. D. N. Y. 1915) 228 Fed. 60.

Remedy.—A court which has possession of a fund has jurisdiction of a proceeding in which a petitioner claims a lien thereon and it is said that the proper and most convenient method is by ancillary bill in the bankruptcy proceedings. *Brown Bros. Co. v. Smith Bros. Co.*, (E. D. La. 1916) 231 Fed. 475.

1912 Supp., p. 472, sec. 2 (3).

Appointment of receivers — Paramount jurisdiction of bankruptcy court.—The fact that the bankrupt has made a general assignment under the state law to one who has taken possession of the estate does not preclude the bankruptcy court from exercising its jurisdiction to appoint a receiver, especially where the interests of creditors will be better protected. *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

Appointment must be necessary for preservation of estate.—"In order to warrant the court in appointing a receiver, the court must find that it is absolutely necessary for the preservation of the property of the bankrupt that a receiver be placed in charge thereof." *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

"A receiver appointed by the state court is in every sense the official arm of that court, and while this court, sitting in bankruptcy, has in my opinion exclusive jurisdiction, after a petition has been filed, to control the custody of the property, there can be no reason ordinarily for adding to the expenses by appointing a federal receiver, and such appointment should not, in the absence of special controlling circumstances, be made. That receiver is the choice of a court acting independently of the insolvent, and not of the insolvent himself." *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

Where a receiver has been appointed by a state court and it is not claimed that he is not careful, prudent or responsible or that the assets are in any way endangered, a federal bankruptcy court should not interfere by appointing a receiver to take charge of the estate. *Ingram v. Ingram Dart Lighterage Co.*, (S. D. Ga. 1915) 226 Fed. 58.

In involuntary proceedings receivers should never be appointed under this section without full compliance with all the requirements, including a showing of cause. *Badders Clothing Co. v. Burnham-Munger-Root Dry Goods Co.*, (C. C. A. 8th Cir. 1915) 228 Fed. 470, 143 C. C. A. 52.

Proof of necessity.—"Where the appointment of a receiver in bankruptcy is sought it is not enough to allege the necessity for such appointment in the language of the statute, but the moving papers must set forth the specific facts which reasonably establish such necessity." *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Receiver's powers and duties in general — As to court orders.—In addition to the duties devolving upon a receiver as a preserver of property actually in his possession, he is a proper person, pending the appointment of a trustee, to carry out any orders that the court may make for the enforcement of the provisions of the Bankruptcy Act under section 2, subd. 15. It is his duty, as well as his privilege, to bring to the court's attention any matters which suggest the advisability of making an order as to book accounts transferred to a creditor. *In re Gottlieb*, (D. C. N. J. 1917) 245 Fed. 139.

A receiver of private bankers in a bankruptcy court is not entitled to hold the proceeds of checks collected by them for depositors where the pass book provided that "Deposits of checks shall not be drawn against until collected." And the fact that the depositors were permitted as a favor to draw upon the deposit is not material, it not appearing that there was any agreement, express or implied, which modified the provision in the pass book. *In re H. & L. Jarmulowsky*, (S. D. N. Y. 1917) 243 Fed. 632.

Right of receiver to maintain suits—*Suit to prevent enforcement of fraudulent judgment.*—A receiver may maintain a suit to prevent the enforcement of a judgment on the ground that it was fraudulently procured, although the claim has not been formally presented. *Owen v. Clifton*, (C. C. A. 5th Cir. 1916) 232 Fed. 136, 146 C. C. A. 328.

Intervention by party.—"A party may not intervene in an ancillary suit brought by the trustee or receiver, the sole purpose of which is to collect assets of the bankrupt for transmission to the bankruptcy court for administration." *West v. Empire L. Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

Restraining suits against receivers.—Where an order appointing an ancillary receiver of a corporation enjoined the corporation, its officers "and all other persons whomsoever, . . . from interfering with, attaching, levying upon, or in any manner whatsoever disturbing the claims, choses in action, and causes of action of the said defendant railway company, . . . or any of the property and premises of the defendant railway company, . . . or from taking possession of, or in any way assuming a control of, or from interfering with, the said claims, choses in action, causes of action, or any other property or premises, or any part thereof" it was held that such provision did not prevent the prosecution of previously instituted actions by stockholders against the corporation and others. *American Steel Foundries v. Chicago, etc., R. Co.*, (S. D. N. Y. 1915) 231 Fed. 1003.

1912 Supp., p. 476, sec. 2 (7).

Jurisdiction conferred by section.—A bankrupt estate is within the exclusive jurisdiction of the bankruptcy court from the time of the filing of the petition, and this jurisdiction does not depend upon actual possession of the property affected; there is no right to seize or attach property admittedly belonging to an alleged bankrupt after the filing of the petition against him, without the consent of the bankruptcy court, regardless of whether actual possession of the property has been taken by its officers. *In re Wellmade Gas Mantle Co.*, (D. C. Mass. 1916) 230 Fed. 502.

The bankruptcy court has jurisdiction under this section of a bill in equity filed by trustees to restrain foreclosure of certain mortgages made by the bankrupt in which the validity of these mortgages, as well as the amount due thereunder, is attacked in an attempt to test their claims against the property now in the possession of trustees elected in bankruptcy proceedings pending in this district. *Karasik v. People's Trust Co.*, (E. D. N. Y. 1917) 241 Fed. 939.

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"Generally speaking, a court of equity has power to determine all questions affecting a fund in course of distribution." *In re Jamison*, (C. C. A. 3d Cir. 1915) 227 Fed. 30, 142 C. C. A. 3.

Where shares of stock are actually in the custody of the trustee, who holds them in that character, the court has jurisdiction to determine the question as to the right of the parties where they had been pledged by the bankrupt and afterwards returned to the trustee by the pledgee. *In re Jamison*, (C. C. A. 3d Cir. 1915) 227 Fed. 30, 142 C. C. A. 3.

1912 Supp., p. 476, sec. 2 (8).

Determination of extent of liens and rights thereunder.—As to the exercise of jurisdiction by the federal courts in the case of a petition by lien creditors to have the property of a bankrupt returned to a state court for administration there, see *Union Electric Co. v. Hubbard*, (C. C. A. 4th Cir. 1917) 242 Fed. 248, 155 C. C. A. 88.

Reopening of estate.—Where an application is made to reopen an estate the referee may take judicial notice of what his own record showed in the original case. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Practice.—Where, after the referee has overruled a demurrer by a bankrupt to a petition to reopen the estate, any error in the ruling on the demurrer is waived by the bankrupt pleading over in an answer. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Time of making application for reopening.—An application to reopen is regarded as timely though made more than two years after the closing of the estate, where made directly after the recording of conveyances alleged to be fraudulent. *Duncan v. Watson*, (Ala. 1916) 73 So. 448.

1912 Supp., p. 478, sec. 2 (11).

Extent of jurisdiction—Generally.—After property has been set apart to the bankrupt as exempt, the jurisdiction of the bankruptcy court is at an end so far as adjudication of the rights of claimants thereto is concerned. *Barker-Bond Lumber Co. v. Whaley*, (1915) 117 Va. 642, 86 S. E. 160.

Under this section a court of bankruptcy has jurisdiction of a claim by a bankrupt of homestead exemption. *Drees v. Armstrong*, (Ia. 1917) 161 N. W. 40.

1912 Supp., p. 479, sec. 2 (15).

General power of bankruptcy court.—Where the question involved is that of jurisdiction to enforce the bankruptcy law or to administer the estate and to protect

the bankrupt free from claims vacated or made void by the adjudication the provisions of this section apply. But the court can retain control of the bankrupt only to carry out the law and not to prevent litigation in courts which have jurisdiction to litigate. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

Power to open and reconsider orders.—The court of bankruptcy is always open, and until the distribution of the fund in controversy the court has the power to open and reconsider on the merits its own orders. *Hume v. Myers*, (C. C. A. 4th Cir. 1917) 242 Fed. 827, 155 C. C. A. 415.

Injunction to protect or preserve assets.—See *In re Consumers' Albany Brewing Co.*, (N. D. N. Y. 1915) 224 Fed. 235.

Enforcing agreement by claimant of property to surrender proceeds of sale to officers of court.—A bankruptcy court has power to enforce an agreement by which a claimant of property undertakes to sell the same and deliver the proceeds of the sale to the receiver of a bankrupt. *In re Hollingsworth, etc., Co.*, (C. C. A. 1st Cir. 1917) 242 Fed. 753, 155 C. C. A. 341.

Powers and duty of receivers.—In addition to the duties devolving upon a receiver as a preserver of property actually in his possession, he is a proper person, pending the appointment of a trustee, to carry out any orders that the court may make for the enforcement of the provisions of the Bankruptcy Act under section 2, subd. 15. It is his duty, as well as his privilege, to bring to the court's attention any matters which suggest the advisability of making an order as to book accounts transferred to a creditor. *In re Gottlieb*, (D. C. N. J. 1917) 245 Fed. 139.

1912 Supp., p. 480, sec. 2 (16).

Facts must exist showing contempt.—There must be evidence showing contempt and the facts in the particular case. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Defense.—The fact that a bankrupt has been sentenced for concealing assets and has served out his term is no defense in a proceeding to punish him for contempt with an order to turn over the assets he concealed. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Valid excuse.—The law is well settled that inability to comply with an order requiring the payment of money, resulting from poverty, insolvency, or other cause not attributable to the fault of the party charged, will under ordinary circumstances be received as a valid excuse from the consequences of contempt. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Criminal contempt.—Where the Act complained of as a contempt is criminal

under the Bankruptcy Act it seems that even conceding the existence of the power to punish by imprisonment for contempt, the court should not exercise it. *In re Elias*, (E. D. N. C. 1917) 240 Fed. 448.

1912 Supp., p. 480, sec. 2 (20).

Ancillary jurisdiction authorized.—The ancillary court may act summarily in aid of the court of original jurisdiction, when such court could have compelled an act by summary proceedings. *Babbitt v. Dutcher*, 216 U. S. 102, 30 Sup. Ct. 372, 54 L. ed. 402, 17 Ann. Cas. 969. But for all substantial purposes of administration the court of original jurisdiction, which is in control of the bankrupt estate, is regarded as in charge, and the ancillary court has nothing to do but collect the assets and transmit them to the bankruptcy court for distribution. *West v. Empire Life Ins. Co.*, (N. D. Wash. 1917) 242 Fed. 605.

A court exercising ancillary jurisdiction and powers in aid of the main jurisdiction and having possession of a specific fund, the title to which is in question and the existence or nonexistence of liens thereon, held by parties residing in the jurisdiction of the court of ancillary jurisdiction, being in question, such last-mentioned court has the power, and it is its duty, to determine title and the existence or nonexistence of such liens thereon. *In re Einstein*, (N. D. N. Y. 1917) 245 Fed. 189.

It is well settled that a court of bankruptcy can exercise ancillary jurisdiction for the purpose of enabling a trustee in bankruptcy, who has been appointed and qualified in another jurisdiction, to reduce to his possession property of the bankrupt which is within the territorial jurisdiction of the court whose ancillary jurisdiction is invoked, and that, where the court of primary jurisdiction can act summarily, the court exercising ancillary jurisdiction may also proceed by summary order. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

Ancillary receiver—Restraining suits against.—Where an order appointing an ancillary receiver of a corporation enjoined the corporation, its officers "and all other persons whomsoever, . . . from interfering with, attaching, levying upon, or in any manner whatsoever disturbing the claims, choses in action, and causes of action of the said defendant railway company, . . . or any of the property and premises of the defendant railway company, . . . or from taking possession of, or in any way assuming a control of, or from interfering with, the said claims, choses in action, causes of action, or any other property or premises, or any part thereof," it was held that such provision did not prevent the prosecution of previously instituted actions by stockholders

against the corporation and others. *American Steel Foundries v. Chicago, etc., R. Co.*, (S. D. N. Y. 1915) 231 Fed. 1003.

Adverse claims.—A court of bankruptcy exercising ancillary jurisdiction has power to determine whether or not a fund held by a receiver in bankruptcy belongs to the estate for which he is acting or to another bankrupt estate and to make proper allowances to the receiver where he has had the care and custody of the fund and has been charged with its preservation. *In re Einstein*, (N. D. N. Y. 1917) 245 Fed. 189.

Right to intervene in ancillary suit.—“A party may not intervene in an ancillary suit brought by the trustee or receiver, the sole purpose of which is to collect assets of the bankrupt for transmission to the bankruptcy court for administration.” *West v. Empire Life Ins. Co.*, (W D. Wash. 1917) 242 Fed. 605.

1912 Supp., p. 481, sec. 3a.

“The burden is upon the petitioners to show that respondent has committed an act which brings it within the purview of the statute.” *Maplecroft Mills v. Childs*, (C. C. A. 4th Cir. 1915) 226 Fed. 415, 141 C. C. A. 245.

The fact that acts charged against a corporation were ultra vires and void, and were not corporate acts does not constitute a defense to a petition for an adjudication of bankruptcy. *Badders Clothing Co. v. Burnham-Munger-Root Dry Goods Co.*, (C. C. A. 8th Cir. 1915) 228 Fed. 470, 143 C. C. A. 52.

1912 Supp., p. 481, sec. 3a (1).

Necessity of intention to hinder, delay or defraud.—In this connection it has been said regarding a chattel mortgage: “The mere fact that the mortgage had the effect to prefer one creditor to another, or to hinder or delay other creditors until the mortgagee’s claim could be collected, or even that it might have the effect to deprive other creditors of a means of obtaining payment of their claims, was not sufficient to constitute the act of bankruptcy charged, if the mortgage was given in good faith to secure the payment of an honest debt. Section 3, subdivision 1, must have the same construction as the statute of Elizabeth. An actual intent to hinder, delay, and defraud other creditors more than is necessary to secure the preferential payment of the debt of the mortgagee is essential to the act of bankruptcy there described.” *Johnson-Baillie Shoe Co. v. Bardsley*, 237 Fed. 763.

Concealment of property.—Where it appeared that an alleged bankrupt, in response to an inquiry by a creditor, as to what he had done with certain money collected by him, replied that he had it

in a safe place, and that it was available on a settlement but that he had offsets amounting to more than petitioners claim, it was held that this amounts to a concealment of property and is an act of bankruptcy. *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173.

The filing of a petition in a state court by an individual stockholder acting on his own behalf, and who is also the president and director and owner of a majority of the capital stock, to which answer is filed, is not an act of bankruptcy under this section. *In re Valentine Bohl Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 685, 140 C. C. A. 225.

Burden of establishing intent.—Creditors alleging that a chattel mortgage was an act of bankruptcy within the meaning of this clause have the burden of proving the bad faith and evil intent which they charge. *Johnson-Baillie Shoe Co. v. Bardsley*, (C. C. A. 8th Cir. 1916) 237 Fed. 763, 150 C. C. A. 517.

Confessing judgment.—Confession of a judgment thus creating a lien on real estate through which a sale can be effected is a transfer within the meaning of this clause. *In re Irish*, (E. D. Pa. 1916) 238 Fed. 411.

Validity of mortgage—State laws.—The question as to the validity of a mortgage alleged as an act of bankruptcy within the terms of this clause is to be determined by the laws of the state where the property is situated and the mortgage made, and if not invalid there will not be considered as an act of bankruptcy as here provided. *Johnson-Baillie Shoe Co. v. Bardsley*, (C. C. A. 8th Cir. 1916) 237 Fed. 763, 150 C. C. A. 517.

1912 Supp., p. 483, sec. 3a (2).

Distinction in cases covered by subdivisions a (2) and a (3).—“Upon consideration it is concluded that while a preference effected through judicial proceedings may fall within one class or the other, the two provisions do not necessarily overlap. The distinction is to be found in the presence or absence of an intent on the part of the debtor to give a preference, and by intent is meant an actual, and not merely a constructive, intent. If the debtor has acted in such a way as to give a preference with the intent and purpose so to do, it is quite immaterial by what means such purpose is accomplished, whether by judicial proceedings or in some other manner. In such case the act falls within a (2). Upon the other hand, if, through legal proceedings, a preference has in fact been permitted or procured, but without any intent or purpose on the part of the debtor to give it, then the act falls within the terms of subdivision a (3).” *In re Musgrove Min. Co.*, (D. C. Idaho 1916) 234 Fed. 99.

Receivership suit in state court—Estoppel.—Where a receiver has been appointed in proceedings in a state court in which a dividend has been declared and the receivership proceeding practically concluded, creditors who have received dividends thereunder are estopped from asserting in a subsequent proceeding in bankruptcy not only any claim to an adjudication on the ground of the appointment of the receiver constituting an act of bankruptcy but also on the ground of preferential payment constituting such an act. *Ohio Motor Car Co. v. Eseman Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 512.

Failure to release levy of attachment.—The failure of an alleged bankrupt to release the levy of an attachment upon his supposed interest in property transferred by him nearly seven years previously has been held not to constitute an act of bankruptcy, even though it be alleged that such transfer was a fraudulent one. Nor can it appear that such attaching creditor will obtain a preference until such sale has been determined to be fraudulent in an action to which the transferee is a party. *In re Murphy*, (N. D. Cal. 1914) 228 Fed. 1018.

Confession of judgment.—Confession of a judgment, thus creating a lien on real estate, through which a sale can be effected, is a transfer within the meaning of this clause. *In re Irish*, (E. D. Pa. 1916) 238 Fed. 411.

1912 Supp., p. 486, sec. 3a (3).

Subdivision a (2) distinguished.—See note under section 3a (2), *supra*, p. —.

Elements of preference.—The preference, which is an act of bankruptcy, is only an execution levy or analogous lien which has been "suffered or permitted" to come into existence and which is allowed to continue until five days before the execution sale. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Lien obtained beyond four months' period.—The statute does not contemplate that the judgment obtained by a diligent creditor prior to the four months' period, and the lien obtained likewise prior to the four months' period, should be defeated merely because it was not possible to have the sale take place earlier than some date which fell within the four months' period. *In re Superior Jewelry Co.*, (S. D. N. Y. 1916) 239 Fed. 372.

Failure to discharge valid liens acquired through legal proceedings more than four months prior to the filing of the petition in bankruptcy does not constitute an act of bankruptcy under this section. *In re Superior Jewelry Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 368, 156 C. C. A. 148.

1912 Supp., p. 488, sec. 3a (4).

- I. Assignment for benefit of creditors.
- II. Appointment of receiver or trustee.

I. ASSIGNMENT FOR BENEFIT OF CREDITORS

In general.—"Under the Bankruptcy Act an assignment for the benefit of creditors is in itself an act of bankruptcy. The assignment remains valid, unless and until an adjudication in bankruptcy is made. It is properly regarded as potentially a fraud upon the Bankruptcy Law and upon the creditors, since its necessary effect would be to defeat the operation of the Bankruptcy Law and to deprive creditors of the protection that that law affords them and the provisions it makes for a speedy and equal distribution of the estate." *In re Neuburger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633.

Form of assignment.—The assignment need not be formal, and it is not even necessary that it should be valid for all purposes. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

"A general assignment, within the meaning of the cited provision of the Bankruptcy Act, embraces any act by the alleged bankrupt having the effect of a conveyance of all its property and an appropriation of it to raise funds to pay its debts, share and share alike. The name and form which the transaction assumes are not material." *Moody-Hormann-Boelhauwe v. Clinton Wire Cloth Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 653, 158 C. C. A. 609.

So the execution of an instrument which, though not in terms yet in legal effect, is an assignment, is an act of bankruptcy under this section. *Anders v. Latimer*, (Ala. 1917) 73 So. 925.

It has been held quite uniformly that the general assignment here contemplated is to be taken in its generic sense, and embraces any conveyance, at common law or by statute, by which one intends to make an absolute and unconditional appropriation of all his property to pay his creditors, share and share alike. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

And it is immaterial whether such general assignment is voluntary or statutory. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Extent of assignment.—An absolute transfer by the debtor of both the legal and equitable titles is indispensable. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

Place of assignment.—It is immaterial whether such a general assignment is

made within or without the United States, and the statute evidently contemplated that wherever a person made such a general assignment, the act was an act of bankruptcy. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

And where the assignment is alleged to have occurred in another country it is immaterial that under the laws of that jurisdiction an act of bankruptcy must have occurred within three months before the presentation of the petition by creditors. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Deed of trust.—The execution of a deed of trust which is placed with an attorney, to be held in escrow, to be delivered in the event that all the creditors should consent to the agreement which had been entered into by the advisory board, and has not been delivered to the trustee, is not an act of bankruptcy under this section. *Carpenter v. Lybrand*, (C. C. A. 4th Cir. 1915) 230 Fed. 84, 144 C. C. A. 382.

Where it appears that the creditors of an alleged bankrupt had been receiving payments on their debts in pursuance of an agreement, and that within ninety days all the creditors would be paid in full, this was declared to be sufficient to show that it was not the purpose of the debtor in executing a deed of trust to in any wise hinder, delay, or prevent his creditors from collecting the debts which he owned. *Carpenter v. Lybrand*, (C. C. A. 4th Cir. 1915) 230 Fed. 84, 144 C. C. A. 382.

Deed of assignment.—The execution of a deed of assignment of property directing the sale thereof and, from the proceeds, the payment of mortgages thereon in the order of their priority and the balance to the general creditors of the assignor, is an act of bankruptcy. *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

Power of attorney.—A mere power of attorney does not operate as in general assignment under this section. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

No defense is possible to a general assignment as an act of bankruptcy. *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

In general.—An application by an insolvent debtor for the appointment of a receiver or trustee is an act of bankruptcy. *In re McKinnon*, (E. D. N. C. 1916) 237 Fed. 869.

II. APPOINTMENT OF RECEIVER OR TRUSTEE

"It is to be noted that not every receivership, even though to finally administer a debtor's assets, or that results in finally administering an insolvent debtor's

assets, is an act of bankruptcy, but those only are such acts as the Bankruptcy Act so declares." *In re Butte Duluth Min. Co.*, (D. C. Mont. 1915) 227 Fed. 334.

Trustee named by stockholders.—Where by a vote of the stockholders of a corporation it was dissolved and the directors were named as trustees to liquidate the affairs of the corporation as provided by the state law, it was held that this was in the nature of an assignment which amounted to an act of bankruptcy, although the action was taken by the stockholders. *Moody-Hormann-Boelhaue v. Clinton Wire Cloth Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 653, 158 C. C. A. 609.

Insolvency essential.—Where the record of the receivership involved in the proceedings in a state court neither directly nor by implication makes it appear that the debtor was insolvent within the meaning of the Bankruptcy Act—that is, that the aggregate of its property at a fair valuation was not sufficient in amount to pay its debts—it fails to show that because of insolvency as so defined a receiver was put in charge of respondent's property, and so fails to prove that respondent committed the act of bankruptcy under this section. *In re Butte Duluth Min. Co.*, (D. C. Mont. 1915) 227 Fed. 334.

"Insolvency is an indispensable prerequisite to the exercise by this court of jurisdiction over the property now in the custody of the receiver of the state court. *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

It was obviously not the purpose of Congress, in using the terms "being insolvent," or "because of insolvency," to have the same apply when the facts upon which a receiver was appointed only show that its assets would not bring enough to pay its debts at a forced sale, or where there was imminent danger of insolvency. *Maplecroft Mills v. Childs*, (C. C. A. 4th Cir. 1915) 226 Fed. 415, 141 C. C. A. 245.

1912 Supp., p. 491, sec. 3a (5).

Test of admission.—Where the written admission referred to in this section is averred, it may be set up that the proceedings are the result of fraud and collusion between the bankrupt and the petitioners. The opposing creditors may not be able to deny the genuineness of the bankrupt's admission but, certainly, they may still assert that even a genuineness admission is in aid of a collusive scheme. Accordingly, if an amended answer sufficiently avers fraud and collusion between the bankrupts and the petitioning creditors, a proper issue is tendered that calls for disposal. *In re Cohn*, (C. C. A. 3d Cir. 1916) 227 Fed. 843, 142 C. C. A. 367.

Admission by corporation.—A corporation by filing a petition in bankruptcy commits an act of bankruptcy within the meaning of this section. *In re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275; *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

Insolvency unnecessary.—It is settled that the question of solvency or insolvency is immaterial where the act of bankruptcy is the written admission referred to in the statute. *In re Cohn*, (C. C. A. 3d Cir. 1916) 227 Fed. 843, 142 C. C. A. 367.

1912 Supp., p. 493, sec. 3c.

Burden of proof.—The burden of proof is in the alleged bankrupt to show his solvency. *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173.

1912 Supp., p. 494, sec. 3e.

[*Petitioner to give bond.*]

The amount of the bond fixes the extent of the liability of creditor and sureties. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

1912 Supp., p. 494, sec. 3e.

[*Allowance of costs, damages, etc.*]

Costs on dismissal of petition.—This provision as to costs, damages, etc., relates to the dismissal of a petition for seizure of property, before adjudication, as by receivership, and has nothing to do with the awarding of costs upon a mere dismissal of the petition. *In re National Carbon Co.*, (C. C. A. 6th Cir. 1917) 241 Fed. 330, 154 C. C. A. 210.

The court has jurisdiction to fix costs and assess damages occasioned by the seizure and detention of the debris property by the receiver though the petition for adjudication has been dismissed. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

Amount of recovery.—The liability of bondsmen under this section is limited to such costs, expenses, and damages as were incident to the taking and withholding of the property, and no recovery can be had as against the bondsmen for costs or expenses incurred in meeting the issue and resisting the petition in bankruptcy. *In re J. Ito Terusaki*, (W. D. Wash. 1916) 238 Fed. 934.

Counsel fees.—Under this section if an alleged bankrupt sees fit to procure the release of his property from the seizure by seeking a dismissal of the petition for adjudication, rather than by an independent proceeding, he cannot be compensated for the expenses and counsel fees which he thus incurred. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

1912 Supp., p. 495, sec. 4a.

Validity and purpose.—The Bankruptcy Act recognizes the right of the bankrupt to make a voluntary assignment of his property, with the purpose of avoiding attachments, and thereby securing an equal distribution of his property among all his creditors, and it cannot be predicated of such a proceeding that its purpose is to defraud the attaching creditors. *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

Corporations.—This section extends to a corporation not within the exceptions the same privilege of becoming a voluntary bankrupt as to an individual, and there exists no good reason why it may not become such a bankrupt in the same way. It is only necessary for such a petitioner, praying adjudication, that he show that he owes debts which he is unable to pay in full, and that he is willing to surrender his property for the benefit of his creditors. *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

A subordinate lodge of Odd Fellows organized and existing under the laws of the state of New York is a corporation and entitled to the benefits of this provision. *In re Carthage Lodge*, (N. D. N. Y. 1916) 230 Fed. 694.

A farmer may institute voluntary proceedings in bankruptcy and a state court is therefore without jurisdiction over a voluntary proceeding in insolvency by a farmer. *Pitcher v. Standish*, (1916) 90 Conn. 601, 98 Atl. 93, L. R. A. 1917A 105.

1912 Supp., p. 495, sec. 4b.

II. Statutory exceptions.

III. Natural persons.

IV. Corporations and unincorporated companies.

II. STATUTORY EXCEPTIONS (p. 496)

Date of status of statutory exceptions.

—The question whether an insolvent is exempt, under this section, depends upon his status as to occupation at the time the acts of bankruptcy were committed. *Virginia-Carolina Chemical Co. v. Shelhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75; *Harris v. Tapp*, (S. D. Ga., 1916) 235 Fed. 918.

Persons engaged chiefly in farming or the tillage of the soil.—*In general.*—These persons are not amenable to involuntary bankruptcy proceedings. *Harris v. Tapp*, (S. D. Ga. 1916) 235 Fed. 918; *Pitcher v. Standish*, (1916) 90 Conn. 601, 98 Atl. 93, L. R. A. 1917A 105.

For an extended statement of facts under which a person was held to be "engaged chiefly in farming" and not subject to adjudication as a bankrupt, see *Harris v. Tapp*, (S. D. Ga. 1916) 235 Fed. 918.

Farming and tillage.—"The word 'farming' and the words 'tillage of the soil' mean the same thing." *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 913, 146 C. C. A. 109; *In re Spengler*, (S. D. Ia. 1916) 238 Fed. 862.

The business of threshing grain for others for hire is not farming. *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 913, 146 C. C. A. 109.

Distinction between exemption of farmer and wage-earner.—"A farmer is exempt from involuntary proceedings, whatever his other interests, if farming is his chief occupation; a wage-earner is exempt only when he actually pursues the calling which that term describes. The farmer works for himself; the wage-earner is an employe, and this implies service for another which is substantially exclusive. This characteristic difference between the two classes is clearly recognized in the language of section 4b." *Virginia-Carolina Chemical Co. v. Shelhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

Wage-earner—Burden of proof.—The burden of proof is on the petitioners to show that a person was not a wage-earner when the acts of bankruptcy were committed. *Virginia-Carolina Chemical Co. v. Shelhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

This burden was held to be sustained by the presumptions arising from years of nonexempt occupation, from the apparent continuance of that occupation down to a later period, and from other facts and circumstances tending to identify him as a manufacturer and trader. *Virginia-Carolina Chemical Co. v. Shelhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

Jurisdiction under state laws over exempted classes.—The state insolvency laws remain in force as to classes of persons expressly excluded from the operation of the Federal Act, and classes which these provisions do not reach; and the same rule should apply to classes of cases not within the scope of the Federal Act. So the provision that a farmer cannot be adjudged a bankrupt in involuntary proceedings leaves that field open to state action, and a state court may have jurisdiction of involuntary proceedings against farmers under a state act. *Pitcher v. Standish*, (1916) 90 Conn. 601, 98 Atl. 93, L. R. A. 1917A. 105.

III. NATURAL PERSONS (p. 498)

Private bankers are amenable to involuntary bankruptcy. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

IV. CORPORATIONS AND UNINCORPORATED COMPANIES (p. 498)

Insurance corporations—Fraternal benefit societies.—In the case of *In re Grand*

Lodge, etc., (N. D. Cal. 1916) 232 Fed. 199, it was held that a fraternal benefit society is not an insurance corporation within the meaning of the Bankrupt Law.

"Unincorporated company"—*Construction and scope of word "company."*—"Whatever may be the full scope of the word 'company,' it does include at least any unincorporated association or group of individuals whose object and purpose are either wholly or chiefly of the same kind as the object and purpose of a moneyed business, or commercial corporation. *In re Order of Sparta*, (C. C. A. 3d Cir. 1917) 242 Fed. 235, 155 C. C. A. 75, *affirming* (E. D. Pa. 1916) 238 Fed. 437.

An unincorporated fraternal beneficial association has been held to be a company within the meaning of this section. *In re Order of Sparta*, (C. C. A. 3d Cir. 1917) 242 Fed. 235, 155 C. C. A. 75, *affirming* (E. D. Pa. 1916) 238 Fed. 437.

1912 Supp., p. 501, sec. 4b.

[*Liability of officers and stockholders of corporations.*]

The express provision of the Bankruptcy Act specifically forbids that the bankruptcy of a corporation shall not release its officers or directors from any liability under the laws of a state, territory or United States. *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016.

1912 Supp., p. 501, sec. 5a.

Adjudication of partnerships as bankrupts, in general.—"The statute provides that a partnership may be declared bankrupt. A partnership is an entity to that extent. The statute does not impose the condition that the partners shall be declared bankrupt at the same time as the partnership. It is plain that the partnership may be declared a voluntary or involuntary bankrupt. There is no limitation in the statute in this regard. *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

If the total assets of the firm and individuals will not suffice "to pay the partnership debts," the firm property and the individual properties may be administered in bankruptcy if the firm is insolvent and if the unadjudicated partner does not object, i. e., consents thereto.

If the firm is insolvent and a solvent partner consents to the administration of the firm and individual assets, it would seem that section 5h would apply and that an adjudication against the insolvent partners and against the firm would be legally possible. The administration of all the assets in the bankruptcy court would follow, and the solvent partner would be entitled to guide or share in that administration under the jurisdiction of the court.

In re Kobre, (E. D. N. Y. 1915) 224 Fed. 106.

Existence of partnership necessary.—In order to justify an adjudication that a person is bankrupt as a partner there must be evidence from which the court can properly find as a fact that such person was a partner. "It would not be enough that to various creditors he had held himself out as a partner, because, while an estoppel might give rights to those who were misled, in order to give rights to all creditors he must have been in fact a partner." *In re Kaplan*, (C. C. A. 7th Cir. 1916) 234 Fed. 866, 148 C. C. A. 464.

Necessity of showing insolvency of members composing firm.—No firm can be compulsorily adjudicated a bankrupt in which any partner appears to be solvent to the extent of having a surplus of property over the debts for which he is personally liable and the debts for which he is liable as a member of the firm. *In re Kobre*, (E. D. N. Y. 1915) 224 Fed. 106.

Where there is no allegation of any act of bankruptcy committed by a non-joining partner, there is no ground for adjudicating him a bankrupt. *In re Lenior-Cross*, (E. D. Tenn. 1915) 226 Fed. 227.

Petition.—Where there is no prayer in the petition for an adjudication of the petitioners individually, the adjudication should be limited to that of the firm, and where an adjudication is desired of the petitioning partners as individuals as well as the firm, there should at least be inserted in the prayer of the petition a request for an adjudication of the petitioning partners as well as of the firm. *In re Lenoir-Cross*, (E. D. Tenn. 1915) 226 Fed. 227.

Who may petition.—It is well settled that one partner may petition to have the partnership declared a voluntary bankrupt. *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

Creditors.—There is only one method in the statute for the institution of an involuntary bankruptcy proceeding, namely, by the petition of a creditor or creditors, stating certain jurisdictional facts. *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

Jurisdiction.—When a person submits himself to the bankruptcy jurisdiction of the District Court in the district in which his partner is resident, that court acquires jurisdiction of him and of his estate wheresoever situated, for all purposes of bankruptcy. *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Distribution.—"From 1841 down to the present time, the several Bankruptcy Acts have so far recognized the doctrine of the separate entity of a firm as distinguished from its individual partners, as to specifically enforce in bankruptcy the equitable rule of distribution, generally recognized aliunde in the Federal courts, that

the net proceeds of the partnership property are to be first appropriated to the payment of partnership debts; the individual estates of the partners, to the payment of their individual debts; and any surplus in either fund, to be applied to the other." *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Reduction of claims to judgment.—"The reduction of their claims to judgment by the partnership creditors does not change the character of such indebtedness from a partnership debt to an individual debt, but changes the form of the debt only. Its character as a partnership debt remains as before, and for which each member of the partnership may be liable, if the partnership assets are insufficient to pay the sum; and section 5f of the Bankruptcy Act provides how the distribution of the assets of the partnership, and of the individual members thereof, shall be made among their creditors, and controls in the distribution of such assets." *In re Hacker*, (N. D. Ia. 1915) 225 Fed. 869.

The reduction of partnership debts to judgment, in a state court according to the local law, against both the firm and the individual members, all being thereafter adjudged bankrupt, does not entitle the judgment creditor to primary participation in the distribution in the bankruptcy court of the individual estates. *Cutler Hardware Co. v. Hacker*, (C. C. A. 8th Cir. 1916) 238 Fed. 146, 151 C. C. A. 222.

Joint individual debts.—In construing these several Bankruptcy Acts giving partnership debts priority of payment out of partnership assets, it has been held by the federal courts, from the beginning, that joint debts of the individual partners of a firm, not created in furtherance of the business of the firm or in its behalf or for a consideration passing to it, are merely the joint individual debts of the partners entitled to share in their individual assets, and are not partnership debts entitled to share as such in the distribution of the partnership property in bankruptcy proceedings. *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Where two members of a firm execute joint notes for property purchased by one of the makers and such purchase has no connection with the partnership business, the holders are not entitled to participate in the administration of the partnership assets in bankruptcy proceedings. *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Partnership and individual insolvency.—When a partnership as such is insolvent and when each individual member is also insolvent, and when the only fund for distribution is produced by the individual estate of one member, the individual creditors of such member are entitled to priority in the distribution of the fund. *Farmers', etc., Nat. Bank v. Ridge Ave.*

Bank, (1916) 240 U. S. 498, 36 S. Ct. 461, 60 U. S. (L. ed.) 767, L. R. A. 1917A 135.

In case of a bona fide dissolution of a partnership where the firm property has been transferred by the retiring partner to his copartner, the bankrupt, a considerable period of time before the filing of the petition, it has been held that a creditor of the firm has no rights, in preference to the trustee to a fund derived from a sale of the property of the bankrupt. *In re Zartman*, (M. D. Pa. 1917) 242 Fed. 595.

Pro rata distribution between firm and individual creditors.—As to the rights of individual creditors to such a distribution, under section 36 of the prior Bankruptcy Act, the current of opinion was that where there is no partnership estate and no solvent partner, partnership creditors were entitled to share ratably with individual creditors in the individual assets of the bankrupt partner. But under the present law the greater authority is to the point that no such exception should be recognized, but that the distribution should follow strictly the language of the Act. *In re Hull*, (M. D. Ohio 1915) 224 Fed. 796.

Selection of trustee.—Where the record of the first meeting of creditors, after giving the title of the cause and reciting that, "this being the time and place for the first meeting of creditors in the above matter in bankruptcy," states that creditors appeared by a person who having a majority of claims in number and amount of those presented for approval, nominated and elected the plaintiff as trustee, and it is not shown that the trustee was selected wrongfully, and the record contains no intimation that the trustee was elected by persons who were not creditors of the partnership; the recital of the appointment sufficiently shows in an action by the trustee to recover an alleged preference, especially in the absence of any evidence to the contrary, that the trustee of the partnership estate was selected in full compliance with this section. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

Marshaling assets.—This section relates to the marshaling of assets between the partnership estate and individual estates of the partners. *In re Cobb's Consol. Co.'s*, (D. C. Mass. 1916) 233 Fed. 458.

Proof of claims—Jurisdiction.—"It is settled that where a partnership is declared bankrupt on a ground involving its insolvency, although one or more, but not all, of the individual members are declared bankrupt, the effect of the adjudication is to draw to the jurisdiction and administration of the bankruptcy court the separate estates of all the partners as well as the partnership estate." *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 321.

Firm creditors.—"The general rule is that firm creditors are not entitled to receive dividends from the separate estates of the partners until separate creditors have been paid in full." *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Insolvent partners of an insolvent partnership cannot rightfully devote the whole of their separate estates to the benefit of a single firm creditor under the guise of treating him as their private creditor, and so ignore their joint and several liability to all the firm creditors. *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 321.

Firm creditor secured by mortgage.—Where insolvent partners attempt to secure a firm creditor by mortgages on their individual property the court may well set such acts aside in virtue of its power under this section. *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 321.

1912 Supp., p. 508, sec. 5h.

When section applies.—This section is limited in its effect to cases in which the partnership is not adjudicated bankrupt and one or more, but not all, the members are so adjudicated.

So where a partnership composed of two members and one of the members are adjudicated bankrupt, and the other member is not so adjudicated, the bankruptcy court may draw to itself and administer the property of the latter to the extent necessary to pay the debts of the partnership. *Armstrong v. Fisher*, (C. C. A. 8th Cir. 1915) 224 Fed. 97, 139 C. C. A. 653.

1912 Supp., p. 508, sec. 6a.

- I. Claiming exemption.
- II. Matters affecting right to exemption.
- III. Recognition of state and federal exemption laws.

I. CLAIMING EXEMPTION (p. 508)

Time and manner of claiming.—See to same effect as original annotation *In re Lenters*, (D. C. Pa. 1915). 225 Fed. 878.

The schedules of the bankruptcy must contain his claim of exemptions, and the trustee is required to set apart the bankrupt's exemptions and to report to the court as to the exemptions so set apart. *In re Brincat*, (S. D. Ala. 1916) 233 Fed. 811.

Claiming specific property.—Whether a specific item of property should go to creditors or be reserved by the bankrupt, it is not for him to constitute himself the judge; but it is his duty to disclose the transaction, that the bankrupt court may determine the right. *In re Brincat*, (S. D. Ala. 1916) 233 Fed. 811.

Amendment of schedules.—See to same effect as original annotation, *In re Radcliffe*, (N. D. Ohio 1917) 23 Fed. 716; *In re Hewit*, (N. D. Ohio 1917) 244 Fed. 245.

While the allowance of an amendment is said to be a matter of grace, the allowance of a claim for exemption is a matter of substantial right, and if, by refusing to allow the amendment, the bankrupt is denied a right which the courts should be astute to recognize and allow, he has gone beyond matters of grace, upon which discretion may be properly exercised, and denied the bankrupt a substantial right, which has not been expressly waived by him, and which he should not be estopped from asserting by reason of any conduct disclosed in this record. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878.

II. MATTERS AFFECTING RIGHT TO EXEMPTION (p. 510)

Fraud.—Ordinary creditors have no interest in exempt property. Its transfer, even with a purpose to hinder, delay, or defraud them, is not therefore an act of which they can justly complain. *In re Ziff*, (M. D. Ala. 1915) 225 Fed. 323.

Where mercantile statements as to assets and schedules subsequently filed, make out in favor of the creditors a prima facie case of concealment on the part of the bankrupt, the burden is cast upon the bankrupt, either to show that the statements were false when made, or else to explain what became of his assets; otherwise, the conclusion would follow that he was concealing a part of his assets. *In re Powell*, (S. D. Ga. 1916) 230 Fed. 316.

The fraud of the bankrupt has been held in Alabama not to disentitle him to his exemptions, even in property fraudulently transferred, when recovered by the creditors. *In re Ziff*, (M. D. Ala. 1915) 225 Fed. 323.

In some jurisdictions under the statute there in force a bankrupt loses his exemption in case of a fraudulent concealment of a part of his property from his creditors. In such cases in order, therefore, to determine the question whether the bankrupt should be allowed his exemption or not, it is necessary to ascertain whether the bankrupt made a full and fair disclosure of all his personal property, or was guilty of willful fraud in the concealment of a part of his property from his creditors, under the state statute. *In re Hardy*, (D. C. Ga. 1916) 229 Fed. 825.

Homestead exemption.—The failure of a bankrupt to make a full and fair disclosure of all the property owned by him at the time of the filing of his petition will defeat his right to his homestead exemption. *In re Hadden*, (S. D. Ga. 1917) 242 Fed. 284.

Evidence explaining shortage of goods as bearing on right to exemption.—Where a bankrupt attempts to explain a shortage

of goods for the purpose of claiming an exemption the measure of proof applicable is that which obtains in civil cases, and not that necessary in cases of contempt for disobedience of an order to surrender. *In re Aronson*, (N. D. Ala. 1916) 233 Fed. 1022.

Lien against homestead.—“Congress cannot destroy the plaintiff's lien against the homestead by the Bankruptcy Act.” *Watters v. Hedgpeith*, (1916) 172 N. C. 310, 90 S. E. 314.

Abandonment.—“It is to be kept in mind always that, whenever land shall have had impressed upon it the homestead character, its abandonment as homestead must be beyond doubt before the homestead protection will be refused. There must be an unequivocal and absolute intention to abandon; and, in most cases, the inference of abandonment will not be indulged in the absence of the acquisition of a new homestead.” *Woodward v. Sanger*, (C. C. A. 5th Cir. 1918) 246 Fed. 777.

Waiver.—The right to claim exemption to specific property exempted by law belongs to the bankrupt householder, and he may surrender or waive it in favor of general creditors, execution creditors and trustee in bankruptcy, but should not be permitted to do so as against a mortgagee in good faith and for value, who, by virtue of his mortgage, has succeeded to his title and interest. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255.

The fact that a bankrupt has given notes in which he waived his right to exemptions does not give the bankruptcy court jurisdiction to administer his exempt property, nor affect his right to have the same set apart to him. *In re Ziff*, (M. D. Ala. 1915) 225 Fed. 323.

A court of bankruptcy has no control over the bankrupt's exemption for the purpose of distributing it among creditors holding waiver notes and cannot do any more than set apart the exemption and turn it over to the bankrupt, or some one duly constituted and appointed to receive it. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

“A waiver of homestead rights in favor of all creditors cannot be worked out through a waiver made to one creditor only, nor can the latter form of waiver entitle all creditors to a right to marshal securities or funds.” *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

III. RECOGNITION OF STATE AND FEDERAL EXEMPTION LAWS (p. 513)

Construction.—The exemption laws should be liberally construed. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878; *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

State law adopted.—To the same effect as the original annotation, see *Grattan v. Trego*, (C. C. A. 8th Cir. 1915) 225 Fed. 705, 140 C. C. A. 579; *Siege v. Greene*,

(C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79; *Olmstead-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 257; *Watters v. Hedgpath*, (1916) 172 N. C. 310, 90 S. E. 314.

"The Bankruptcy Act does not create any personal or homestead exemptions in favor of the bankrupt. It merely preserves to the bankrupt the full benefit of such exemptions as at the time of the adjudication he is entitled to under the state law." *In re Hewit*, (N. D. Ohio 1917) 244 Fed. 245.

"The bankrupt court can do nothing more than cause to be set apart to the bankrupt the property which the state law exempts from his debts. *Lockwood v. Exchange Bank*, 190 U. S. 294, 23 Sup. Ct. 751, 47 L. Ed. 1061. Otherwise the trustee has nothing to do with exempt property." *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

Distinction between firm and individual property.—While, by this provision, the state law is controlling as to the character and amount of exemptions to be allowed to a bankrupt, the distinction between firm and individual property in the administration of a bankrupt estate is to be determined as a matter of general law in the federal courts, irrespective of the views of the state court of the bankrupt's domicile, in equity or under insolvency acts. *In re Turnock*, (C. C. A. 7th Cir. 1916) 230 Fed. 985, 145 C. C. A. 179.

Homestead exemptions.—The rule that the allowance of exemptions under the Bankruptcy Law is governed by the state statutes applicable thereto, has been applied to homestead exemptions.

Georgia.—A bankrupt who does not include property in his schedules which should have been included is not entitled to a homestead exemption where the state law provides that a debtor shall forfeit his right to the exemption allowed by law if he is guilty of fraud in concealing from his creditors any part of his property at the time he seeks the benefit of the exemption. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

A claim of a homestead exemption has been denied where it was shown that the creditor sought to avail himself of the statute allowing it to enable him to pay a debt and thus prefer a creditor to whom, as well as to several other creditors, he had given a note with a waiver of homestead attached. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

Iowa.—Where there is no registration and record of a deed as required by statute, within the four months' period, it has been held that the deed is voidable as to the excess over the homestead right. *Siege v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79.

Ohio.—Where by statute a bankrupt who owns no homestead is entitled to an exemption out of his personal property,

the latter exemption should be allowed where it appears that real estate owned by him and which was covered by mortgages in excess of its value has been conveyed by the trustee to the mortgagees. *In re Radcliff*, (N. D. Ohio 1917) 243 Fed. 716.

Oklahoma.—In *Gregory v. Pritchard*, (C. C. A. 8th Cir. 1917) 240 Fed. 414, 153 C. C. A. 340, the following facts appeared: About 11 months before the proceedings in bankruptcy were begun the bankrupt purchased a dwelling property in Oklahoma City for the declared purpose of occupying it as a home for himself and wife. At the time of purchase it was in possession of a third party under a lease for a year recently executed. The bankrupt had been informed that he could probably obtain possession and so made the purchase; but the tenant, upon being applied to by the bankrupt and by others in his behalf, finally declined to vacate the premises, or to let the bankrupt and his wife have a room in the house. The bankrupt made all reasonable efforts to obtain possession, but failed. He had no other homestead and no other real property. Between his purchase and the bankruptcy proceedings he painted the house, made some repairs on and about it, and pruned the fruit trees. In area and value this property was within the provisions of the Oklahoma Constitution as to homesteads. It was held that the bankrupt was entitled to a homestead exemption. *Gregory v. Pritchard*, (C. C. A. 8th Cir. 1917) 240 Fed. 414, 153 C. C. A. 340.

Oregon.—Where a statute provides for the exemption of a homestead limited in value and extent, it was held that as the premises claimed by the bankrupt fell within the limitations of the statute the court was without discretionary power to refuse to set the exemption aside. *In re Barde*, (C. C. A. 9th Cir. 1915) 225 Fed. 715, 140 C. C. A. 589.

Texas.—Where the law of a state provides that "the homestead, not in a town or city, shall consist of not more than 200 acres of land, which may be in one or more parcels, with the improvements thereon; * * * provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired," it has been declared that where the head of a family owning several tracts not exceeding 200 acres in the aggregate, lives upon one of the tracts, and claims all as a homestead, the burden of proving one of the tracts not homestead should be upon the person attacking the homestead claim. The presumption should be that all is homestead. *Woodward v. Sanger*, (C. C. A. 5th Cir. 1918) 246 Fed. 777, — C. C. A. —.

Growing and unmatured crops.—When an order is made setting aside a home-

stead to a bankrupt, whether the homestead be exempt under the laws of the state or under the laws of the United States, the order of necessity carries with it all growing and unmaturing crops. *Olmstead-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 257. See also *Olmstead-Stevenson Co. v. Langsdorf*, (C. C. A. 9th Cir. 1916) 231 Fed. 76, 145 C. C. A. 264.

Partnership exemptions.—Where state laws allow no exemptions out of partnership assets, none can be claimed by bankrupts out of the property in the hands of the trustee and specifically identified as part of the former firm property which shortly prior to the filing of an involuntary petition to have the firm adjudged bankrupt, the members of the partnership, with knowledge of the insolvency, divided among themselves for the purpose of enabling each of them to claim an exemption. *In re Turnock*, (C. C. A. 7th Cir. 1916) 230 Fed. 985, 145 C. C. A. 179.

Tools, implements of trade, etc.—Exemptions given bankrupts in their stock in trade, tools and fixtures are personal and cannot be claimed by a purchaser under a mortgage foreclosure sale of the property. *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348.

Milk cans, plows, harrows, cultivators, buzz saws, ice racks, hayracks, harness for team and team blankets are necessary working tools for a farmer. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255.

Auto truck.—Under a code provision exempting one dray or truck by the use of which a drayman, truckman, etc., habitually earns his living, it was declared that without passing upon the question as to whether or no an auto truck would be exempt under any circumstances, it would not be where it does not appear that the petitioner habitually earned his living by the use of the truck in question. *In re Schumm*, (N. D. Cal. 1915) 232 Fed. 414.

Work cattle.—"Three yoke of work cattle and their yokes" by all common understanding means bovines and their yokes, and not equines and their harness. *Kennedy v. Hills*, (C. C. A. 9th Cir. 1916) 233 Fed. 666, 147 C. C. A. 474.

Wages.—Where a man is the head of a family his creditors have no interest in his wages which are exempt and he may do with them as he chooses. *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

Wearing apparel.—*Jewelry.*—A diamond finger ring valued at \$650 has been held not to be exempt. *Rivas v. Noble*, (C. C. A. 5th Cir. 1917) 241 Fed. 673, 154 C. C. A. 431.

City pension.—A pension payable by the City of New York to a bankrupt under charter provisions which permit the board of estimate and apportionment to retire "from active service" any officer, clerk,

or employee who shall have been in the employ of the city of New York for a period of thirty years and upwards, and who shall have become physically or mentally incapacitated for further performance of the duties of his position, and to award him an annual sum or annuity, to be fixed by such board, is not a vested right, but a bounty granted by the government through the municipality to encourage persons engaged in the public service. It can be recalled at will, and is not, therefore, an asset which passes to the trustee in bankruptcy. *In re Hoag*, (S. D. N. Y. 1915) 227 Fed. 478.

Life insurance.—Where at the time of the passage of an act exempting insurance policies on the life of a bankrupt ordinary creditors could have looked to the policies for payment of their debts the act has no effect as to them. *In re Bonvillain*, (E. D. La. 1916) 232 Fed. 370.

But where a policy had no cash or surrender value when such an act was passed, and was not available as an asset, it was held that the bankrupt was entitled to the policy as against creditors whose debts had not come into existence at that time. *In re Rosenberg-Oldstein Co.*, (E. D. La. 1916) 236 Fed. 812.

Duty of trustee.—One of the first concerns of the trustee should always be promptly to set aside to the bankrupt any exempt property. If the real estate in which the homestead is claimed be indivisible, steps should be taken to have it sold. *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

1912 Supp., p. 520, sec. 7a (8).

I. Schedule of assets.

II. Schedule of creditors and liabilities.

I. SCHEDULE OF ASSETS (p. 521)

Sufficiency of schedule.—As to what should be included in the schedules, it has been said: "It is not unusual to require a report of property which cannot be utilized by the trustee. For example, a bankrupt is required to report all the property which he claims is exempt, although all that can be done with it is to set it off to him. Again, he is required to report what portion of the bankrupt estate has passed under assignment for benefit of creditors, although, if it was more than four months before the bankruptcy, it cannot be recovered by the trustee. Other provisions might be cited, but this is sufficient for our purpose. In other words, the rule requires the reporting of much property that may or may not be held by the trustee that the courts may determine its liability for the payment of debts. Such determination is a part of the administration of the estate." *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Exempt property.—This section does not require that the bankrupt shall enumerate articles claimed as exempt, but only that the claim for such exemption as he may be entitled to shall appear in the schedules which he is required to file. A strict adherence to form is not necessary in order to obtain a substantial right of this nature in a court of bankruptcy. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878.

A remainder, vested or contingent interest in land must be scheduled. *Pollock v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

II. SCHEDULE OF CREDITORS AND LIABILITIES (p. 521)

Sufficiency of schedules as to addresses.

—When there is a failure to state the correct residence of the creditor the debt is not duly scheduled, and hence not discharged by the decree in bankruptcy, unless it shall appear that the creditor had actual knowledge of the proceeding. *Horbach v. Arkell*, (1916) 172 App. Div. 566, 158 N. Y. S. 842.

Omission of street and number.—

“Whether or not the use of initials and omission of street addresses are insufficient will almost invariably depend upon extrinsic circumstances. It is a matter of common knowledge that there are business concerns whose commercial names and places of business are known throughout the world of commerce. It would be a superfluous task to append street number address in such cases.” *Clafin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

General Order No. VIII—Schedule by nonjoining partner.—Upon an adjudication of bankruptcy against a firm the nonjoining partner may be required to file a schedule of his debts and an inventory of his property, in accordance with the concluding clause of the Eighth General Order in Bankruptcy. *In re Lenoir*, (E. D. Tenn. 1915) 226 Fed. 227.

As the individual property of a partner, who resisted a petition to have the firm adjudicated a bankrupt, is subject to administration and application by the court of bankruptcy so far as necessary in order to pay in full the partnership debts, he is required by General Order in Bankruptcy No. VIII (89 Fed. vi, 32 C. C. A. xi) to file a schedule of his debts and an inventory of his property within ten days after his adjudication in bankruptcy. *Armstrong v. Fisher*, (C. C. A. 8th Cir. 1915) 224 Fed. 97, 139 C. C. A. 653.

Incomplete schedule as affecting jurisdiction of referee.—Where it was objected on a hearing to confirm the report of the referee that he had no jurisdiction to proceed because the schedules were incomplete and the deposit did not cover all the exist-

ing claims, the court, confirming the report of the referee, said: “It is now urged by the objecting creditors that, upon it appearing that there were claims not scheduled, the referee lost jurisdiction until the schedules had been amended and a deposit made, or a waiver filed, to cover the added indebtedness. Sections 12a, 7a, 39a (2) and General Order 9 (89 Fed. vi, 32 C. C. A. xiii) are referred to in support of this contention. No decision on the point has been called to my attention. If such an objection can of right be insisted on by any creditor except those so omitted—which I doubt—I am of opinion that the sections and order mentioned do not so limit the general discretionary power of the court in matters of reference to and reports from referees as to prevent me from hearing and deciding the case on the present report of the referee, accompanied as it is by the evidence and exhibits before him. *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

1912 Supp., p. 524, sec. 7a (9).

Scope and application.—This section applies to the bankrupt only, and does not protect the ordinary witness, whose rights must rest upon the general rules of law. *Knoell v. U. S.*, (C. C. A. 3d Cir. 1917) 239 Fed. 16, 152 C. C. A. 66.

Officers of a bankrupt corporation are included within this Act. *People v. Lay*, (1916) 193 Mich. 17, 159 N. W. 299.

Perjury.—The Bankruptcy Act, which requires the bankrupt to submit to an examination, does not permit him to give false testimony regarding his estate or property and its whereabouts or the disposition thereof, and then claim immunity from a prosecution for perjury committed while so testifying. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Production of books and papers.—A bankrupt private banker may lose his right to object to the use of books and papers in a criminal prosecution against him by a failure to avail himself of the right afforded by the state law to obtain a restitution of the same within the period designated by such law. *In re Mandel*, (S. D. N. Y. 1915) 224 Fed. 642.

1912 Supp., p. 527, sec. 8a. [Not to abate proceedings.]

Death as abating proceedings.—“Bankruptcy proceedings, once commenced, do not abate on the death of the alleged bankrupt, whether the proceeding be voluntary or involuntary, and whether adjudication has been had, or not, at the time of such death.” *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

A proceeding to vacate a sheriff's sale, made after the death of the bankrupt, is properly brought by the trustee under this section. *Home Buyers' Bldg., etc.*,

Ass'n v. Peterman, (1916) 253 Pa. St. 418, 98 Atl. 619.

1912 Supp., p. 528, sec. 8a.

[*Dower and allowances for widow and children.*]

An assignment for the benefit of creditors within four months of an adjudication in bankruptcy does not affect the right, under this section, of the widow of the bankrupt. *In re Scott*, (C. C. A. 7th Cir. 1915) 226 Fed. 201, 141 C. C. A. 653.

1912 Supp., p. 529, sec. 9a.

Arrest prior to institution of bankruptcy proceedings.—A judgment for a breach of contract of marriage, if not accompanied by seduction, is dischargeable in bankruptcy. Where a defendant was arrested on execution against the person on such a judgment prior to the institution of a bankruptcy proceedings a writ of habeas corpus has been sustained. *In re Komar*, (N. D. N. Y. 1916) 234 Fed. 378. See also *Ex parte Margiasso*, (S. D. N. Y. 1917) 242 Fed. 990.

Exemption from arrest.—In the case of an application to restrain the sheriff from levying a body execution upon the judgment debtor in a state court, pending the time within which an application for discharge could be made, the question of the discharge litigated, and the proceedings in bankruptcy carried on to a point where the bankrupt would not be harassed and interfered with in his bankruptcy proceedings by the process in the hands of the sheriff, the court granted the motion for a definite period to be stated in the order when settled, in order to allow the bankrupt to apply to the state court for the appropriate remedy to bring up the question of the effect of his discharge. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

1912 Supp., p. 531, sec. 11a.

- I. In general.
- II. Discretion as to granting stays.
- V. Where state court has complete jurisdiction.

I. IN GENERAL (p. 532)

In view of the paramount character of the Bankruptcy Law, the jurisdiction of the bankruptcy court, when properly invoked, is exclusive as respects the administration of the affairs of insolvent persons and corporations. The inhibition of section 720 of the Revised Statutes against the issue of injunctions to stay proceedings in a state court, or to take possession of the property, distinctly excepts cases where the injunction is authorized by the Bankruptcy Law. Ohio

Motor Car Co. v. Eiseman Magneto Co., (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 512.

Limitation of stay.—A stay under this section cannot delay the prosecution of a suit longer than the determination of the application for a discharge. The court can retain control of the bankrupt only to carry out the law and not to prevent litigation in courts which have jurisdiction to litigate. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

Suits brought after petition filed.—This section does not in terms cover suits begun after the filing of the petition; but it is obvious that such suits, in so far as they interfere with the bankruptcy administration, are inconsistent with its exclusive jurisdiction, and it is settled that when they do interfere they will be enjoined. *In re Lavery*, (D. C. Mass. 1916) 235 Fed. 910.

II. DISCRETION AS TO GRANTING STAY (p. 532)

Stay discretionary.—To same effect as original annotation, see *Smith v. Miller*, (1917) 229 Mass. 187, 115 N. E. 243.

Consideration of comity.—Where property is in the possession of a receiver appointed by the state court, an application for a stay therein should in the first instance, in obedience to the rule of comity, be presented to the state court, and it cannot be presumed that the application will be denied. *Ohio Motor Car Co. v. Eiseman Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370; 144 C. C. A. 512.

V. WHERE STATE COURT HAS COMPLETE JURISDICTION (p. 535)

Mere interest of trustee.—A court of bankruptcy has no power to temporarily enjoin a sale of property of the bankrupt, proposed to be made by a state officer pursuant to a decree of a state court entered, before the petition in bankruptcy was filed, in proceedings to foreclose a valid mortgage, which was executed more than four months prior to the adjudication in bankruptcy, when the only reason why the stay is sought is to permit the trustee to attempt to secure a purchaser and to advertise the proposed sale more extensively than has been done by the state officer, and thus possibly realize more for the general creditors. *In re Schmidt*, (D. C. N. J. 1915) 224 Fed. 814.

Assets unaffected.—Where a bankrupt is not entitled to a discharge because of a prior discharge within six years he cannot have the suits of creditors in a state court stayed where the assets in the custody of the bankrupt court will in no wise be affected thereby. *In re Johnson*, (S. D. Ala. 1916) 233 Fed. 841.

Supplementary proceedings.—Though an order in supplementary proceedings

is stayed by the order adjudging the defendant a bankrupt for the period of twelve months, pursuant to the provisions of this section, the proceeding, however, is not superseded and can be continued at any time one year from the adjudication. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

1912 Supp., p. 540, sec. 11d.

Construction.—This section must be construed with section 2, subdivision 8, which invests the court of bankruptcy with the power to close estates, whenever it appears that they have been fully administered, by proving the final accounts and discharging the trustees, and to reopen them whenever it appears that they were closed before being fully administered. *Duncan v. Watson*, (Ala. 1916) 73 So. 448.

Time within which trustee may sue.—In an action in a state court it has been held that where the statute of limitations has not run on an action by a trustee in bankruptcy on promissory notes held by the bankrupt, owing to the fact that the Bankruptcy Act suspends the running of the statute in favor of such trustee, a recovery is not barred by laches because the action was delayed more than seven years, for an action at law timely brought with respect to the statute of limitations cannot be deemed barred by mere laches without evidence of estoppel. *Oppenheimer v. Roberts*, (1916) 175 App. Div. 424, 161 N. Y. S. 1049.

1912 Supp., p. 540, sec. 12a.

Effect of section.—This section provides a method whereby the expenses of preserving and conducting the business of an estate pending action on the composition may become part of the expenses of administration, in case composition is finally denied and adjudication made, and impliedly at least, negatives the idea that such expenses may become part of the expenses of administering the estate where the defendant, without invoking the action of the court, in the prescribed manner, voluntarily and on its own sole motion continues the conduct of its business. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Theory of composition agreement.—“The fundamental theory and purpose of a composition agreement is that all creditors shall be treated alike, and that none shall have any advantage, secret or otherwise, over the other.” *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Composition after discharge.—The fact that a dividend has been paid to creditors and the bankrupt has applied for and received his discharge does not preclude the bankrupt from making an offer of

composition. *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

The schedules filed by the bankrupt are binding upon him in the absence of fraud or mistake. *In re Aarons*, (D. C. N. J. 1917) 243 Fed. 634.

1912 Supp., p. 541, sec. 12b.

Application for confirmation.—Where, from a financial standpoint, an offer of composition is in the best interest of creditors and it would be an undue hardship on a bankrupt if the composition agreement should fail, a new application to confirm the agreement may be made after an arrangement, by reason of which a confirmation was refused, has been nullified. *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Withdrawal of claim by creditor.—“There is nothing in this section which prevents a creditor from withdrawing a claim at any time he pleases, provided, of course, such withdrawal is in good faith and without fraud or other wrongful agreement or means.” *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Deposit—Generally.—“The ‘consideration to be paid by the bankrupt to his creditors’ may or may not be cash. A bankrupt usually does not have enough ready money of his own to carry out a composition. The ‘consideration to be paid’ may be the bankrupt’s notes, secured or even wholly unsecured, or his mere promise to pay in the future a given amount. . . . It is common knowledge that compositions sometimes contemplate the taking by creditors of stock or securities under a reorganization. . . . It is, we think, also clear that such ‘consideration’ need not be actually deposited with the court. True, the statute requires that it ‘be deposited in such place as shall be designated by and subject to the order of the judge,’ thus plainly permitting a deposit of notes or other evidences of debt, secured or unsecured, with any approved depository. But this deposit is for the sole benefit of the creditors concerned, and there can, we think, be no doubt of the power of such creditors to waive actual deposit of money or securities.” *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Where an offer of composition is made before the year is up it is regarded as made to all those who are shown on the schedules, including those who may not prove till after the year is past, and the bankrupt must deposit a sum sufficient to pay the dividends of all creditors scheduled. *In re Atlantic Const. Co.*, (S. D. N. Y. 1915) 228 Fed. 571.

1912 Supp., p. 543, sec. 12d (1).

The decision of the creditors is evidence, prima facie, that the composition

is for the best interest; and the burden is upon those who attack the composition. *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

"The mere fact that the estate will on full administration pay more to the creditors than the offer in composition is not sufficient reason for refusing confirmation. Other considerations than the mere amount of the dividends may properly be considered by creditors in determining whether to accept or reject the offer. They have, within fair limits, a right to decide in favor of an immediate payment, as against a postponed and uncertain one, probably of larger amount. A decision to that effect, honestly made by an overwhelming majority of the creditors, in the exercise of their business judgment, ought not to be overridden, unless justice to the objecting minority plainly requires such action." *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

When composition will not be confirmed.—Where the court is not satisfied with the proof of the validity of claims of certain of the creditors necessary to constitute the required majority assenting to the composition, confirmation may be denied. *In re Weintrob*, (E. D. N. C. 1917) 240 Fed. 532.

Where a bankrupt omitted from a financial statement a liability for the purchase price of goods still on hand confirmation of a composition has been denied. *In re Kerner*, (S. D. N. Y. 1917) 245 Fed. 807.

Where there is either an unexplained large shortage in the bankrupt's assets or certain statements made by him several months prior to his offer of composition were false, confirmation of the composition will be denied. *In re Weintrob*, (E. D. N. C. 1917) 240 Fed. 532.

An offer of composition has been rejected where it was offered to the creditors before the bankrupt was examined in open court and had filed in court his schedules. *In re Berler Shoe Co.*, (S. D. N. Y. 1917) 246 Fed. 1018.

1912 Supp., p. 544, sec. 12d (2).

Concealment.—Where the only books a bankrupt kept were a merchandise ledger, which showed his accounts with all those from whom he purchased on credit, a check book and a pass book, this was held not to authorize an inference of intended concealment. *In re Silberstein*, (S. D. N. Y. 1915) 225 Fed. 665.

Fraudulent transfer.—Payment of money to a wife and to a daughter for a wedding trousseau do not necessarily operate as a bar to a discharge and therefore authorize a refusal by the court of a confirmation of a composition but much must depend on the circumstances of the particular case. *In re Silberstein*, (S. D. N. Y. 1915) 225 Fed. 665.

1912 Supp., p. 545, sec. 12e.

Effect of confirmation.—While the confirmation of a composition discharges the bankrupt where he lives up to the agreement and composition yet it has been held that where cash and notes are given pursuant to the order confirming the composition, and the notes are not paid, the original debt revives. And this is said to be true though the notes are indorsed by a third party, unless it is established by the evidence that they were taken in satisfaction of the original debt. *American Woolen Co. v. Friedman*, (1916) 97 Misc. 593, 163 N. Y. S. 162.

Distribution.—*The clerk of the court is not charged with the duty of making the distribution of the consideration in cases of compositions.* *In re Newbold*, (D. C. Utah 1917) 244 Fed. 888.

Nor is the clerk of the court entitled to charge any amount, for the distribution of the consideration paid in compositions effected in bankruptcy proceedings. *In re Newbold*, (D. C. Utah 1917) 244 Fed. 888.

Claims not scheduled.—Where a bankrupt offered a composition which omitted the claimant from its schedule of creditors for the reason that such creditor had refused to file a claim in the estate of the bankrupt on the theory that its debt was not one dischargeable in bankruptcy it was declared: "Either the composition should include the payment of this dividend, and the dividend should be paid with an express provision that it is on account of a debt claimed to be not dischargeable, or the bankrupt Alpert must deposit the amount which would be the dividend to be paid upon the amount which is claimed by the Nankin estate, and the amount of this claim may be litigated further." *In re Alpert*, (E. D. N. Y. 1916) 237 Fed. 295.

Claims reserved for future liquidation.—Where the claims of creditors secured by a special fund were reserved for future liquidation in an order of confirmation it was held that the claims must be first liquidated before the court could distribute the consideration for the composition. *In re Hollins*, (S. D. N. Y. 1916) 230 Fed. 920.

Consideration for composition not paid.—Where a composition has been ordered the moral obligation to pay in full is sufficient to support a new promise, made after the bankrupt is discharged, to pay a creditor in full. *Spann v. Read Phosphate Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 338, 151 C. C. A. 354.

1912 Supp., p. 546, sec. 13a.

Order confirming composition will not be disturbed, where the court on appeal is unable to say from a consideration of the evidence before the referee and the district judge that they were clearly in error

in finding it insufficient to prove a statement made by the bankrupt was materially false and made for the purpose of obtaining credit thereby. *International Trust Co. v. Myers*, (C. C. A. 1st Cir. 1917) 245 Fed. 110, 157 C. C. A. 406.

1912 Supp., p. 547, sec. 14a.

Right to discharge.—"The policy of the law with respect to the discharge of bankrupts from the legal obligation to pay their debts has been determined and settled by Congress. The bankrupt is entitled to the discharge, except in certain clearly defined cases." *In re Pechin*, (E. D. Pa. 1915) 225 Fed. 798.

Who entitled to a discharge.—"A corporation is entitled in a proper case to receive a discharge in bankruptcy. *In re Hargadine-McKittick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Individual firm members.—"Where no act of bankruptcy is charged against the members of a firm, and the proceedings are against the partnership as a legal entity, the individual members are not entitled to a discharge in bankruptcy. *Peterson v. Perego, etc., Co.*, (Ia. 1917) 163 N. W. 224.

Administrator.—"Bankruptcy proceedings do not abate on the death of the alleged bankrupt, in which case the administrator may properly file an application for a discharge. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Application for discharge.—"The question as to whether the bankrupt will apply for a discharge, or not apply, is determined by himself alone. The court has no part in this determination. This is a personal matter of the bankrupt until the petition for a discharge is filed, and neither the creditors nor the court are called upon to act until the application is filed." *In re Skaats*, (S. D. Ala. 1914) 233 Fed. 817.

Notice.—"Application for discharge must be made by the bankrupt upon notice to the creditors at the addresses given in the schedules, unless something in the record gives information that that address has been changed, or that some one else has succeeded to the creditor's rights. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

When application must be made.—"The next twelve months."—"If the true construction of the words 'subsequent to being adjudged a bankrupt' in the law is that they were placed there solely to prevent the filing of a petition for a discharge before adjudication, which adjudication follows a voluntary petition as matter of course, then the words 'within the next twelve months' would clearly refer to the words 'after the expiration of one month,' and the true reading would be 'any person, subsequent to being adjudged a bankrupt may, after the expira-

tion of one month and within the next twelve months, file an application,' etc. As the section is written in the statute it is quite clear that the Congress intended that the bankrupt should be debarred from filing his petition for a discharge for one month after his adjudication as a bankrupt, giving that time for his creditors to make inquiry and examine the bankrupt and witnesses prior to the filing of an application for a discharge. Then comes the fixing of the time, limitation of time, within which the application for discharge must be filed, and then the right to an extension of time by order of the court in case he (the bankrupt) is unavoidably prevented from filing his application within the 12 months next succeeding the adjudication." *In re Snell*, (N. D. N. Y. 1917) 244 Fed. 613. See also *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378; *In re Daly*, (N. D. N. Y. 1915) 224 Fed. 263.

Delay.—"If delay is occasioned by the fault of a postmaster, or the postmaster's employees, where the application is forwarded by mail, or is occasioned by the fault of some clerk or employee in the office of the attorney making the application, justice demands that a nunc pro tunc order be made. It is not the purpose or policy of the law in such a matter as this to take advantage of errors, or mistakes, or misconstructions." *In re Daly*, (N. D. N. Y. 1915) 224 Fed. 263.

Delay by court or referee.—"Delay by the court or referee in conducting the bankruptcy proceedings proper or in deciding questions relating to the due administration of the estate arising therein affords no excuse for not filing the application for a discharge within the time fixed by statute. The decision or determination of such questions in no way affect the right of a bankrupt to file his application for a discharge. *In re Snell*, (N. D. N. Y. 1917) 244 Fed. 613.

Mistake.—"Where the petitioner's counsel, through an honest mistake as to the law, supposed that the petition for discharge could not be filed until the equity proceedings in the state court (in which charges were made against the bankrupt, which would be sufficient, if established, to defeat the discharge) had been terminated, and he therefore did not attempt to file the petition for discharge until the conclusion of those proceedings it was declared that it would be altogether too strict a construction of the statute to hold that on such facts the bankrupt did not have the right to petition for his discharge within the six months' period. *In re Swain*, (D. C. Mass. 1917) 243 Fed. 781.

Effect of failure to apply for discharge on subsequent bankruptcy proceedings.—"Where a bankrupt fails to apply in due time for a discharge, or is denied a discharge, from debts provable in one proceeding, he cannot be granted a discharge

from such debts in a subsequent proceeding." *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

The failure of a bankrupt to apply for a discharge in a previous proceeding precludes him, in a subsequent proceeding, from procuring a discharge from the scheduled and provable debts in the former. *In re Cooper*, (D. C. N. J. 1916) 236 Fed. 298.

In a subsequent bankruptcy proceeding, when it appears that there are debts which have been incurred since the first proceeding, from which he is entitled to a discharge, the bankrupt may be granted a qualified discharge, excepting the old debts. *In re Cooper*, (D. C. N. J. 1916) 236 Fed. 298.

1912 Supp., p. 549, sec. 14b.

I. Generally.

II. Objections to bankrupt's discharge.

III. Hearing and proof.

IV. Determination.

I. GENERALLY (p. 549)

Nature of proceeding.—"An application for a discharge is in the nature of a separate proceeding from the original case, which is closed with the final distribution of assets. The reference to the referee of the original case confers no jurisdiction whatever on him as to the discharge." *In re Kendrick*, (D. C. Vt. 1915) 226 Fed. 980.

Discharge as a matter of right.—"A discharge under the present act is a legal right, unless some objection be filed and affirmatively sustained, for reasons specifically enumerated in section 14 of the statute, and not otherwise." *In re Kaufman*, (C. C. A. 2d Cir. 1917) 239 Fed. 305, 152 C. C. A. 293. See also *In re Wix*, (W. D. S. C. 1916) 236 Fed. 262.

Conditions of discharge.—"An insolvent debtor has no means of obtaining a discharge, except under favor of the Bankruptcy Law, and that law expressly forbids the granting of a discharge under certain conditions, and they cannot be disregarded even though the denial may impose a hardship on the bankrupt. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Effect of nondischargeable debts.—"The fact that a discharge from one of the debts cannot be granted does not affect the right of the bankrupt to be discharged from such as are dischargeable. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

II. OBJECTIONS TO BANKRUPT'S DISCHARGE (p. 550)

Right to object.—"The right to oppose the bankrupt's discharge may be a property right, in the sense that, if discharge is denied, any lien would remain

and would pass under the state law in case of the death of a creditor. But this right to oppose is not such that the bankrupt should be compelled to proceed in the proper jurisdiction for administration of the deceased creditor's estate, in order to cut off those rights by actual notice of further hearings to all parties who might prove themselves entitled to name the representative of the estate, or who might contest successfully the claims of others to name such representative. A trustee would not be bound, in declaring a dividend, to seek out those who had a right to make claim to that dividend; but the burden would be upon the proper representatives of the estate of the deceased creditor to claim their property. So, in the matter of discharge, the burden is upon the bankrupt to give reasonable notice to all those appearing by the record to be entitled to an opportunity of being heard or of putting themselves in a position where their interests may be heard. If the bankrupt does this, he is entitled to have the proceedings go forward, after waiting a reasonable time for other claimants to assert their claims." *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Specification of objections—Requisites.—"A bankrupt is entitled to a discharge unless one or more of the six grounds set out in section 14 of the Bankruptcy Act . . . are pleaded and sustained by proof, and the burden to do this rests upon the objecting creditor. The rule of pleading requires the same certainty in the specifications of objections as in other pleadings; such certainty as will put the bankrupt on notice of what he is to meet. *In re Groves*, (S. D. Fla. 1917) 244 Fed. 197.

Where it is alleged in the specification of objections that some of the creditors are pecuniarily interested in the estate and that they have filed proof of their claims which have been allowed and it appears that all of the objecting creditors have claims which will be barred by the discharge, a right to oppose the granting of a discharge is sufficiently shown. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

A specification in objections to the discharge of a bankrupt on the ground of concealment is insufficient where it does not charge that the concealment was knowingly and fraudulently done. *In re Opava*, (N. D. Iowa, 1916) 235 Fed. 779.

Amendment.—"Where after the original specifications of objections were filed, and during the progress of the hearing upon those which were filed, another alleged instance of the same general character as those already charged came to the knowledge of the trustee and of objecting creditors, it was held that leave should be granted to amend the specifications. *In re Pechin*, (E. D. Pa. 1915) 225 Fed. 798.

Who may object.—A mere volunteer, not having a party in interest, cannot object to a discharge "unless the creditors, either singly or collectively, desire that a bankrupt's discharge be opposed, such discharge must be granted." *In re White*, (N. D. Cal. 1917) 238 Fed. 874.

Party in interest.—Where a petitioner's claim has been proved, admitted by the bankrupt, objected to by no one, allowed by the referee, and not reconsidered on motion of the trustee, it should be regarded as "liquidated" under section 57 of this Act, and the petitioners are a "party in interest" entitled to oppose the bankrupt's discharge under this section. *In re Menzin*, (C. C. A. 2d Cir. 1916) 238 Fed. 773, 151 C. C. A. 623.

A creditor cannot insist on remaining in the bankruptcy proceeding and at the same time pursue his remedy in the state court on the theory that his debt is not dischargeable. A creditor like this one can prove his claim in bankruptcy and oppose the discharge on the ground of false statement in obtaining property; but, if he will not liquidate his claim, and persists in proceeding in another jurisdiction on the theory that the debt is not provable and not dischargeable, then by his own interpretation he is not a "party in interest" entitled to oppose discharge. *In re Menzin*, (S. D. N. Y. 1916) 233 Fed. 333.

III. HEARING AND PROOF (p. 553)

Nature of hearing.—Objections to a bankrupt's discharge are the beginning of a distinct and separate dispute, and the hearing thereon is in effect a trial in equity. *In re Amer*, (E. D. Pa. 1915) 228 Fed. 576.

Evidence.—The testimony of an objecting creditor, taken by consent and given under oath, may be used, after his death, upon proof of the administration of the oath to testify, even if the actual signature or verification upon the paper itself cannot be obtained. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Burden of proof.—The burden rests on the creditor objecting to the discharge of a bankrupt to show that he is not entitled to it. *In re Wix*, (W. D. S. C. 1916) 236 Fed. 262.

Hearing postponed pending proceeding in state court.—Where a petitioner brought suit in a state court more than four months before bankruptcy and had garnishments served on property, to secure a release of which a bond was filed, it has been held that he has an equity entitling him to a "reasonable postponement" of the discharge of the bankrupt, so as to enable him to enforce his rights in the state court. *In re Philips*, (S. D. Ga. 1915) 224 Fed. 628.

Where a creditor dies during the hearing on his specifications of objections,

there can be no general presumption that a man is unable to pay his debts, and that therefore he has creditors who are more interested than his next of kin, and where a reasonable time has elapsed to allow such creditors, if they exist, to act on the default of the next of kin, or representatives of the deceased, there would seem to be no reason why the bankrupt should not be allowed to proceed with his application for discharge. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Reference to special commissioner—Jurisdiction.—The question of the effect of a discharge on a particular debt can be raised only in a proceeding before a court having jurisdiction to decide that issue, and cannot be determined by a special commissioner to whom specifications of objection to the discharge have been referred. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

Confirmation of findings by special commissioner.—As to the confirming of such findings it has been said: "Experience has proven that a report in the form of an opinion, such as has been used in admiralty and equity and is customary in bankruptcy, is generally of more value than enumerated statements of fact and conclusions of law, which require extensive exceptions in the nature of a pleading, if confirmation is opposed. A simple motion to confirm a report, in the form of an opinion, allows argument of any question involved. Further, the District Court will not overrule the findings of the commissioner, if there is any evidence upon which those findings are based, unless the conclusions are contrary to law, or unless consideration of the entire issue leads to different construction of some of the acts involved. It will be held, therefore, that there is no necessity for returning the report, or for more particular findings." *In re Rowe*, (E. D. N. Y. 1917) 240 Fed. 165.

Collateral attacks—Order extending time—Letters of administration.—On the hearing of an application for a discharge made by the administrator of a deceased bankrupt after the expiration of the year under the authority of an order extending the time in which to make such an application, the order granting the extension cannot be attacked in the proceeding before the special master or judge, nor can the regularity or validity of the letters of administration. Such an attack can only be made by motion. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

IV. DETERMINATION (p. 555)

Vacating discharge.—An order may be granted vacating a discharge and allowing specifications to be filed where the default of the objecting creditor in filing them arose through some misunderstanding between him and the bankrupt's at-

torney about the time and place when the bankrupt should appear for his examination. *In re Applegate*, (S. D. N. Y. 1916) 235 Fed. 271.

Costs.—As the hearing on the objections to a bankrupt's discharge is in effect a trial in equity, the equity rules as to taxation of costs may be properly applied. *In re Amer*, (E. D. Pa. 1915) 228 Fed. 576.

The fact that the same objecting creditor filed similar exceptions in five separate cases does not relieve it from payment of costs to each of the bankrupts. *In re Amer*, (E. D. Pa. 1915) 228 Fed. 576.

1912 Supp., p. 557, sec. 14b (1).

Making false oath.—Although it is a crime to make any false oath in any proceeding in bankruptcy, it is not a ground for denial of a discharge unless the oath be made in the bankruptcy proceedings of the bankrupt himself. A mere literal reading of the two sections (Bankr. Act, §§ 14 and 29) might lead to a contrary result; but it is perfectly obvious that the bankrupt's discharge depends upon his conduct toward his own creditors; and not upon his general truthfulness, even in other independent proceedings. *In re Lesser*, (S. D. N. Y. 1916) 232 Fed. 368.

Incredible answers.—A discharge has been refused where on his examination the bankrupt again and again replied, "I don't know," "I couldn't say," "I don't remember," to questions concerning matters which had been within his knowledge, which had taken place within a few months before the examination, and which were of such character that entire forgetfulness concerning them all was incredible. The court further said in this case: "More than 60 times during an examination covering fourteen pages of typewriting, the bankrupt made answers of the sort referred to. In some instances the answers can, perhaps, be justified by the phrasing of the question; but in many others they are obviously untrue. The inference of an intent to falsify is greatly strengthened by the repetition of such answers to various sorts of questions, such as occurs in this examination." *In re Kaplan*, (D. C. Mass. 1917) 245 Fed. 222.

False oath due to mistake or advice of counsel.—If a false oath was due to a mistake in fact, or the honest advice of counsel, to whom the bankrupt had disclosed all the facts relative to the items omitted from his schedules, and which form the basis of the objections, a discharge will not be refused. In other words, such oath must have been knowingly and fraudulently made. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

False oath as to homestead exemption.—An objection that the bankrupt made

a false oath with reference to his homestead exemption certainly cannot be passed upon until the question is settled of the bankrupt's right to the exemption, and even if it should be determined that he is not entitled to the exemption, that would not show that he swore wilfully false in his application for the same. *In re Meikleham*, (N. D. Ga. 1916) 236 Fed. 401.

Specifications alleging false oath.—The specifications of objection must state that the oath was "knowingly and fraudulently" made. This must be the charge in the specifications, and the oath made must be as to a material matter, which must appear from the specifications of objection. The requirement that the false oath must have been, not only knowingly made, but "fraudulently" made, is of the very essence of the objection. "Intentionally" is not the same as "fraudulently." The meaning of the two words is not the same. The one word is not a synonym of the other. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Omissions and inaccuracies in the schedule.—Where it appears that a bankrupt has concealed assets which have not been listed in his schedules, he will be deemed to have taken a false oath when he swore to the truth of the schedules. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

Where in making up his schedules the bankrupt attempted to decrease certain claims to a creditor and it appeared that the claim was much larger it was declared that unless the creditor could have been successfully estopped, and his claim held down to the lower amount, it would seem that the attempt by the bankrupt to falsely state his financial condition would be sufficient ground for denial of discharge. *In re Rowe*, (E. D. N. Y. 1917) 240 Fed. 165.

Concealment—"Knowingly and fraudulently."—To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt after the filing of a petition against him, while a bankrupt, or after his discharge, and the property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Opponents of discharge must show existence of property.—Specifications of objection should point out or specify what property was concealed, and when, with some reasonable degree of certainty. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650. 1912 Supp., p. 558, sec. 14b (2).

1912 Supp., p. 558, sec. 14b (2).

Concealment of financial condition.—See to same effect as original annotation, *In re Shrimer*, (E. D. N. C. 1916) 228 Fed. 794; *In re Kaplan*, (D. C. Mass. 1917) 245 Fed. 222.

Intention to conceal.—See to same effect as original annotation, *In re Shrimer*, (E. D. N. C. 1916) 228 Fed. 794.

"Failed to keep books of account."—In a case involving the construction of this provision it was said: "Analyzing this statutory provision, it is clear that its sole purpose is to condemn a design on the part of a bankrupt to conceal his financial condition by either (a) destroying his books of accounts or records, or (b) concealing them, or (c) failing to keep them. It cannot be construed to require any particular system of bookkeeping, nor can it be construed to require the keeping of books at all. The books kept may be so faulty and deficient as to in fact deceive creditors as to the bankrupt's financial condition, yet, if they have been so kept with no purpose to conceal such condition, the inhibition of this statute does not apply. Congress emphasized this construction when by the amendments of 1903 it struck out the words 'fraudulent' before the word 'intent,' 'true' before the words 'financial condition,' and the words 'and in contemplation of bankruptcy' following the words 'financial condition.'" *Sherwood Shoe Co. v. Wix*, (C. C. A. 4th Cir. 1917) 240 Fed. 692, 153 C. C. A. 490.

No particular method of bookkeeping is required; the law does not require a man to keep books at all. The only provision of the law is that he must not adopt a method of keeping books for the purpose of concealing his true financial condition. No matter how irregularly or poorly kept his books may be, if the evidence does not show that his intent was to conceal his true financial condition, he is entitled to his discharge. *In re Wix*, (W. D. S. C. 1916) 236 Fed. 262.

False entries.—The making of false entries in the books is, of course, a failure to keep true books of the most glaring sort, and only from true books can the bankrupt's financial condition be ascertained. *In re Helfgott*, (S. D. N. Y. 1917) 245 Fed. 358.

Limited business.—The nature and extent of the bankrupt's business may be so limited that an intent to conceal his financial condition will not be inferred from his failure to keep books or more complete records. *In re Arnold*, (D. C. N. J. 1915) 228 Fed. 75. See also *Devorkin v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Long established method.—The fact that a bankrupt had for ten years adopted

the same method or lack of method of bookkeeping refutes the presumption that he had adopted such method for the purpose of concealing from his creditors his financial condition. *Sherwood Shoe Co. v. Wix*, (C. C. A. 4th Cir. 1917) 240 Fed. 692, 153 C. C. A. 490.

Where the agent of a bankrupt failed to keep the required books, the bankrupt may be refused a discharge, it being said that there is no reason why the bankrupt should not be required to take the risk of the agent's conduct, as in many other instances. *In re Janavetz*, (C. C. A. 3d Cir. 1915) 219 Fed. 876, 135 C. C. A. 546; *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766.

Intention presumed.—That the failure of a bankrupt to keep books and records was with the intent to conceal his financial condition, in the absence of any reasonable explanation will be presumed, on the theory that he is chargeable with intending the natural and probable consequences of his own acts and omissions. *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766.

"The intent spoken of in this clause of the act need not be proven by absolute showing that the party, in failing to keep books, designed to conceal assets or fail to disclose the state of his business; but it may be deduced from all the facts and circumstances in the case and thus ascertained and determined. The well-established rule is often invoked in determining the intent, namely, that a man must be presumed to intend the natural consequences of his act." *In re Josephson*, (D. C. Ore. 1916) 229 Fed. 272; *In re Chass*, (W. D. Pa. 1916) 238 Fed. 573.

The mere destruction of books is not prohibited unless it is done with guilty intent, and where there is no proof to that effect and no pretense that a fraud was perpetrated, a discharge will not be denied. *In re Rosenthal*, (C. C. A. 2d Cir. 1916) 231 Fed. 449, 145 C. C. A. 443.

Burden of proof.—In determining whether the bankrupt has offended against the provisions of the Bankruptcy Act in failing to keep certain books the burden rests on the objecting creditors to prove the essential element of the offense that the acts done and omitted by the bankrupt were with intent to conceal his financial condition. *Sheinberg v. Hoffman*, (C. C. A. 3d Cir. 1916) 236 Fed. 343, 149 C. C. A. 475.

The objecting creditor carries the burden of establishing the unlawful intent. *In re Shrimer*, (E. D. N. C. 1916) 228 Fed. 794.

1912 Supp., p. 560, sec. 14b (3).

False statement in writing.—*In general.*—See to same effect as original annotation, *In re Josephson*, (D. C. Ore.

1916) 229 Fed. 272; *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248.

The written statement must have been (1) materially false, and (2) made for the purpose of obtaining property on credit. A statement, to be "materially false" within the meaning of this statute, must be not only false in fact in a material matter, but must have been made with the intention to deceive. And such statement must have been made for a certain specified purpose, namely, "to secure property from another on credit." *Aller-Wilmes Jewelry Co. v. Osborn*, (C. C. A. 8th Cir. 1916) 231 Fed. 907, 146 C. C. A. 103.

It must appear not only that the statement relied on was false but was also knowingly made. *Hamlin v. J. M. Radford Grocery Co.*, (Tex. Civ. App. 1916) 182 S. W. 716.

Extension of credit on faith of statement.—A false statement in writing made for the purpose of obtaining money or credit bars a discharge. *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248; *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801; *In re Samet*, (D. C. Md. 1917) 243 Fed. 203.

Conditional sale on faith of statement.—Where false statements are made the case is not taken out of the operation of this provision though the goods were delivered under "conditional sale contracts" with a reservation of title. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

False statement by stockholder of corporation.—A false statement made by a bankrupt may bar his right to a discharge, although the credit was obtained by a corporation of which the bankrupt owned the majority of the stock. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

False statement by stock broker.—Where a stock broker represented to a customer who purchased stock on margin, that he had stocks "on hand" for him and the latter, induced thereby, made further payments thereon, it was held proper to deny a discharge to the broker. *In re Shea*, (D. C. Mass. 1917) 245 Fed. 363.

Financial statement to bank.—Where a bank relying on false statements made by the bankrupt did not apply the debtor's balance to the reduction or extinguishment of any of his notes when they fell due in consequence of which he owed the bank more than he otherwise would have done, a discharge was denied. *In re Samet*, (D. C. Md. 1917) 243 Fed. 203.

False statement to commercial agency.—Where the bankrupt gave a false statement of his financial standing to a mercantile agency and according to his own testimony the purpose was not merely to obtain a rating but to obtain credit through the agency from his creditors it was held that the bankrupt made such

agency his duly authorized agent to circulate the falsehoods concerning his financial condition among his different creditors whenever they should ask for information, and the case therefore falls directly within the terms of section 14b. *In re Haimowich*, (E. D. Pa. 1916) 232 Fed. 378, *affirmed* (C. C. A. 3d Cir. 1917) 243 Fed. 338, 156 C. C. A. 118.

But if in fact the false statement was made generally to the mercantile agency and was not afterward communicated to a subscriber, and if, therefore, no credit was procured upon faith in it, then obviously the provision, which contemplates obtaining property on credit based upon a false statement, does not extend to a false statement alone. *Haimowich v. Mandel*, (C. C. A. 3d Cir. 1917) 243 Fed. 338, 156 C. C. A. 118, *affirming* (E. D. Pa. 1916) 232 Fed. 378.

A false statement made to a commercial agency two years before incurring the debt in question has been held not to be a sufficient ground on which to base opposition to a discharge, as it was not a statement made in contemplation of securing credit, which could be relied on by the creditor without additional inquiry. *Balfe v. Tilton*, (D. C. N. H. 1916) 237 Fed. 684.

In J. W. Ould Co. v. Davis, (C. C. A. 4th Cir. 1917) 246 Fed. 228, 158 C. C. A. 388, it was held that Congress did not intend to make "general statements to mercantile agencies not specifically asked for by prospective creditors" available ground for opposing bankrupt's discharge.

False statement made by partner.—See to same effect as original annotation, *Doyle v. Baltimore First Nat. Bank*, (C. C. A. 4th Cir. 1916) 231 Fed. 649, 145 C. C. A. 535.

An omission of an indebtedness of partners to relatives, in a statement made by a member of a firm for the purpose of obtaining credit, is a ground for refusing a discharge. *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801.

Statement omitting liabilities.—A bankrupt who omitted some liabilities from a statement by him of his financial condition cannot defend by showing that the balance is substantially correct. *In re Maaget*, (S. D. N. Y. 1911) 245 Fed. 804. See *In re Kerner*, (S. D. N. Y. 1917) 245 Fed. 807.

Immaterial false statement.—While there may be a point at which the proportion of sums omitted in an untrue statement to the total sum of liabilities or surplus may be so insignificant as to have no weight in making the untruth material, yet in the consideration of the question, each case must stand upon its own facts. *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801.

It has been held that the discharge must be denied, if money or property in any amount, not utterly trivial, is thus

obtained. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Intent.—See to the same effect as original annotation, *Doyle v Baltimore First Nat. Bank*, (C. C. A. 4th Cir. 1916) 231 Fed. 649, 145 C. C. A. 535.

Evidence—Burden of proof.—The burden is upon the objector to sustain the allegations in his specifications of objection. *In re Haimowich*, (E. D. Pa. 1916) 232 Fed. 378.

1912 Supp., p. 562, sec. 14b (4).

Concealment, etc., of assets—In general.—See to same effect as original annotation, *In re Cooper*, (C. C. A. 2d Cir. 1916) 230 Fed. 991, 145 C. C. A. 185; *In re Opava*, (D. C. N. D. Iowa 1916) 235 Fed. 779; *In re Braus*, (S. D. N. Y. 1916) 237 Fed. 139; *In re Wibeck*, (D. C. Mass. 1917) 245 Fed. 135.

What constitutes concealment—Small bank balance.—Where a bankrupt had a sum of money on deposit in a bank which he did not schedule or turn over to the trustee, but later checked it out and used it for his own personal benefit, there was held to be a concealment justifying an inference of fraud, even though the amount was small. *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248.

Transfer to bankrupt's wife.—Although a deed given to a bankrupt's wife within four months of bankruptcy might constitute a preference it would not of itself be a ground for opposition to a discharge. "If the payment merely constituted a preference, the discharge should be granted, and if the bankrupt did not intentionally conceal his assets from his creditors, but sought to secure an equitable claim belonging to his wife, even though it might make him insolvent, it would not legally of necessity involve fraudulent concealment of assets." *In re Keen*, (E. D. N. Y. 1916) 237 Fed. 684.

Mere carelessness in scheduling assets will not amount to such a fraudulent concealment as will bar a discharge. *In re Meikleham*, (N. D. Ga. 1916) 236 Fed. 401.

A transfer made more than four months prior to filing of petition, though probably made to hinder, delay, and defraud creditors, is not a ground for objection to a discharge. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Transfer of equity of redemption.—Whether such a transfer will operate to bar a discharge was considered in *Devorkin v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Presumption of value.—"In deciding whether a conveyance had the effect to hinder, delay, and defraud creditors, it is of no controlling importance that the trustee has not been able to avoid it, or even that he has not tried to avoid it, and, doubtless, in the absence of any

proof, there would be some presumption that property conveyed by the bankrupt had value." *Devorkin v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Advice of counsel.—See to same effect as original annotation, *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

Evidence—Burden of proof on opposing creditors.—Creditors, opposing the bankrupt's application for a discharge on the grounds specified in this section have the burden of proof. *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766; *Poff v. Adams*, (C. C. A. 4th Cir. 1915) 226 Fed. 187, 141 C. C. A. 185.

1912 Supp., p. 567, sec. 14b (5).

Application and effect of section.—While this act provides that a bankrupt may have only one discharge within six years it does not preclude him from having more than one adjudication and distribution of his property through a bankrupt court during that period. *In re Johnson*, (S. D. Ala. 1916) 233 Fed. 841.

There is no limit to the number of petitions a debtor may file in bankruptcy, nor of their frequency, except he may not be granted more than one discharge in a voluntary proceeding within a period of six years. *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

Proceedings brought within six years.—Previous proceedings in bankruptcy in which no application for a discharge was made do not bar the right of the bankrupt to a discharge in subsequent proceedings brought within six years. *In re Skaats*, (S. D. Ala. 1914) 233 Fed. 817.

1912 Supp., p. 567, sec. 14b (6).

[Refusal to obey lawful orders.]

Refusal to answer proper questions.—In order to justify the denial of a discharge on the ground of the refusal by a bankrupt to answer questions it must appear that the court or referee approved the question propounded, and that then the bankrupt refused to answer, and that such question was material. *In re Lenweaver*, (N. D. N. Y. 1915) 226 Fed. 987.

1912 Supp., p. 568, sec. 14b (6).

[When trustee may interpose objections.]

Scope of trustees' authority.—See the case of *In re White*, (N. D. Cal. 1917) 242 Fed. 1001.

1912 Supp., p. 568, sec. 15.

Revocation of discharge.—This section does not prevent the granting of an order vacating a discharge and allowing specifications to be filed where the default of the objecting creditor in filing them arose

through some misunderstanding between him and the bankrupt's attorney about the time and place when the bankrupt should appear for his examination. *In re Applegate*, (S. D. N. Y. 1916) 235 Fed. 271.

1912 Supp., p. 569, sec. 16a.

Surety on bond to dissolve attachment.

—In an action against the sureties on a bond given to dissolve an attachment it has been held that the fact that the plaintiff had presented his claim against the bankrupt to the bankruptcy court, and received dividends thereon in excess of the sum in which the undertaking involved in the pending suit was given, did not operate to discharge the obligation of the sureties upon said undertaking. *Curtin v. Katchinski*, (1916) 31 Cal. App. 768, 161 Pac. 764.

Surety on injunction bond.—In an action on a bond given on the issuance of an injunction to enjoin the collection of a judgment, it has been held that an adjudication and discharge of the judgment debtor in bankruptcy and the action of the creditor in accepting a composition and a share of the proceeds thereof does not operate to discharge the surety on the bond. *Martin Furniture Co. v. Massey*, (1916) 135 Tenn. 338, 186 S. W. 451.

The surety on a "forthcoming bond" given to release on levy on property of the judgment debtor, is not released by the discharge of the debtor in bankruptcy proceedings. *Evans v. Rea*, (Tex. Civ. App. 1917) 193 S. W. 707. See also *Evan v. Rea* (1917) 108 Tex. 260, 191 S. W. 1133.

Indorsers of promissory notes.—The provisions of this section have been applied in the case of an action against the indorsers of a promissory note, the maker of which has been discharged in bankruptcy. *Bass v. Geiger*, (Fla. 1917) 73 So. 796.

1912 Supp., p. 570, sec. 17a.

Effect of discharge.—"The discharge is prima facie a release from all debts—at least a bar against enforcement." *Halligan v. Dowell*, (Ia. 1917) 161 N. W. 177.

All provable debts released—*In general*.—See to same effect as original annotation, *Butler Cotton Oil Co. v. Collins*, (Ala. 1917) 75 So. 975; *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Liens and mortgages.—All liens and mortgages are not annulled or voided by bankruptcy or discharge, but only those which come within the provisions of the Bankruptcy Act. *Butler Cotton Oil Co. v. Collins*, (Ala. 1917) 75 So. 975.

Valid liens against the property of a bankrupt may be enforced after he is discharged in bankruptcy as he is released from personal liability only. *Wills v. E.*

K. Wood Lumber, etc., Co., (1915) 29 Cal. App. 97, 154 Pac. 613.

Nondischargeable debt.—Where a debt is not dischargeable in bankruptcy, the creditor is not required to come into a bankruptcy court and prove his claim, with a view of having it excluded from the order of discharge. *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

Judgments.—A judgment on a note made by the bankrupt and indorsed by another is a claim provable in bankruptcy and after a discharge has been granted to the bankrupt the enforcement of the judgment against the indorser may be restrained. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Pleading discharge—*Necessity of pleading.*—In a suit to enjoin the sale of property under execution where it is claimed that the judgment on which the execution was issued is barred by a discharge in bankruptcy it is necessary for him to plead his discharge and that the debt from which he was discharged and which was asserted against him in the subsequent proceeding was not within any of the classes of claims which the Act excepts from the operation of the discharge. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Burden of proof.—In a suit to enjoin the sale of property under execution where it is claimed that the judgment on which the execution was issued is barred by a discharge in bankruptcy the burden is on the plaintiff to prove his discharge. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

In an action upon a judgment the burden of establishing that it has been discharged in bankruptcy rests upon the defendant. *Hyde Park Flint Bottle Co. v. Miller*, (1917) 179 App. Div. 73, 166 N. Y. S. 110.

It is for the judgment creditor to show by a preponderance of the evidence that the judgment upon which he sues was not affected by the discharge in bankruptcy because the liability upon which his judgment is bottomed is within said exceptions. *Halligan v. Dowell*, (Ia. 1917) 161 N. W. 177.

1912 Supp., p. 573, sec. 17a (2).

- I. False pretenses or representations.
- II. Wilful and malicious injuries.
- III. Miscellaneous.

I. FALSE PRETENSES OR REPRESENTATIONS (p. 573)

Liability for obtaining property by false pretenses or false representations.—See to same effect as original annotation *In re Menzin*, (C. C. A. 2d Cir. 1916) 238 Fed. 773, 151 C. C. A. 623.

Judgment—*In general.*—The fact that a liability has passed to judgment does

not take it out of the operation of this section, as the judgment does not so far work a merger that the original claim cannot be inquired into. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

Judgment on surety bond.—Where a bond was obtained from a surety company by false representations and the company, having been compelled to pay the bond, thereafter sued the insured for false representations in obtaining the bond and obtained judgment against him for the penalty and interests, such judgment is not canceled by his discharge in bankruptcy. *In re Dunfee*, (1916) 219 N. Y. 188, 114 N. E. 52.

Judgment for costs.—Costs decreed to defendants in a suit in equity to reform a written contract of sale, in connection with which false and fraudulent representations were made, as established by a judgment in an action at law, constitute a provable debt in bankruptcy proceedings where they were commenced and the discharge granted after the equity case came into the appellate court. *Kennett v. Tudor*, (Vt. 1916) 99 Atl. 306.

Promissory notes given by bankrupts.—The discharge of a bankrupt does not discharge his liability on a note, executed for borrowed money where it appears that he had created the debt through false pretenses and representations in regard to an insurance policy. *Ehlinger v. Speckels*, (Tex. Civ. App. 1916) 189 S. W. 348.

Renewal note.—The mere giving of a note in renewal of a former one, even if acceptance is induced by false representations is not an obtaining of property by false pretenses or false representations within the meaning of this section. *Carville v. Lane*, (1917) 116 Me. 332, 101 Atl. 968.

When a tort may be waived and an action quasi ex contractu maintained, the claim is a debt within the meaning of the Bankruptcy Act and provable. *Enosburg Falls First Nat. Bank v. Bamforth*, (1916) 90 Vt. 75, 96 Atl. 600.

II. WILFUL AND MALICIOUS INJURIES (p. 575)

Wilful and malicious injury defined.—The words "wilful and malicious" do not have the general, broad, legal significance, but they are used in a more narrow and specific sense, implying actual malice and "wilful disregard of what one knows to be his duty, an act which is against good morals and wrongful in and of itself, and which necessarily causes injury and is done intentionally." It is not necessary that "malice," as used in the phrase "wilful and malicious injuries to the person," should be shown toward a particular individual. In acts of a certain character, the law will imply malice. *McClellan v. Schmidt*, (D. C. N. J. 1916) 235 Fed. 986. See further *In re Levitan*, (D. C. N. J. 1915) 224 Fed. 241.

Assault and battery.—The bringing of a suit on a judgment rendered in an action for assault and battery and the recovery of a second judgment thereon does not operate to take the claim out of the operation of this provision. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

Conversion of property.—Where a person with whom money has been deposited to secure the performance of a contract by another, which contract is fully performed, converts such money to his own use, there is a wilful and malicious injury to the property of another within the meaning of this section. *In re Keeler*, (N. D. N. Y. 1917) 243 Fed. 770.

A conversion of stock by a firm of brokers constitutes a wilful and malicious injury to property where, in violation of instructions to have the stock transferred to the name owner for whom it was purchased, they misappropriate it to help themselves over a financial crisis. *Wood v. Fiske*, (1916) 175 App. Div. 135, 161 N. Y. S. 1097.

Burden of proof.—Where a debt is one which is provable in bankruptcy the burden of proof is on the judgment creditor to show that such liability is within the exception of this provision as to liabilities for wilful or malicious injury to the person or property of another. *In re Levitan*, (D. C. N. J. 1915) 224 Fed. 241.

III. MISCELLANEOUS (p. 576)

Liabilities for alimony.—Where a state court in awarding a judgment for alimony gives the wife the right to occupy certain property as a homestead, such judgment is not released by a discharge in bankruptcy. *Brown v. Brown*, (1916) 172 Ky. 754, 189 S. W. 921.

A divorce decree by which a wife was awarded the "sum of fifty (50) dollars per month, as alimony, payable monthly, or en masse, at the option of the plaintiff, in the sum of five thousand (5,000) dollars," has been held to be a judgment in the nature of alimony and not released by a discharge of the husband in bankruptcy. *Egbers v. Egbers*, (1917) 98 Wash. 531, 167 Pac. 1073.

1912 Supp., p. 577, sec. 17a (3).

Debts not scheduled.—*Address of creditor.*—A debt is not duly scheduled where it appears that the address of the creditor given in the schedule was the business address of the creditor and the debtor knew that the creditor had not conducted business at such address for several years and that any communication addressed there would not be received. *Jenkins v. Levy*, (1917) 167 N. Y. S. 847.

Stating the residence of a judgment creditor as unknown, without some evidence of due diligence to ascertain the address, does not constitute a due scheduling of the debt so as to effect its discharge.

Hyde Park Flint Bottle Co. v. Miller, (1917) 179 App. Div. 73, 166 N. Y. S. 110.

Notice or actual knowledge.—"While it is true that the word 'actual' does not usually advance the meaning, it must be understood in the connection used in the statute under consideration to emphasize the fact that the knowledge of the party must be actual as contradistinguished from constructive or speculative; it must be something existing in fact." *Wheeler v. Newton*, (1915) 168 App. Div. 782, 154 N. Y. S. 431.

Actual knowledge of officer of creditor bank in time to permit of participation in the proceedings in time to prove the claim, is sufficient. *Wrightsville Bank v. Four Seasons*, (Ga. App. 1917) 94 S. E. 649.

Knowledge of bankruptcy proceedings.—The fact that one's debtor has gone into bankruptcy is not notice or knowledge of "the proceedings in bankruptcy;" it does not impose the duty upon the creditor of taking active steps. *Wheeler v. Newton*, (1915) 168 App. Div. 782, 154 N. Y. S. 431; *Jenkins v. Nevy*, (1917) 167 N. Y. S. 847.

Burden of proof.—The burden of proof is upon the bankrupt to establish the fact that the debt was duly scheduled and that the creditor had actual knowledge of the proceedings in bankruptcy. *Jenkins v. Levy*, (1917) 167 N. Y. S. 847.

1912 Supp., p. 578, sec. 17a (4).

Debt created by fraud or embezzlement.

—One who has stolen or fraudulently received a sum of money cannot retain that money and schedule the claim as a debt in his own estate and then obtain a discharge in bankruptcy. *In re Alpert*, (E. D. N. Y. 1916) 237 Fed. 295.

Embezzlement.—A claim against the president of a corporation for money embezzled by him is not released by the discharge of such officer in bankruptcy. *Floyd v. Layton*, (1916) 172 N. C. 64, 89 S. E. 998.

Fiduciary capacity.—The term "fiduciary capacity" embraces technical trusts only and not implied trusts. *Enosburg Falls First Nat. Bank v. Bamforth*, (1916) 90 Vt. 75, 96 Atl. 600.

Factor, commission merchant, etc.—A debt due by a commission merchant is not one accruing in a fiduciary capacity and though such a person converts the proceeds of goods sold on commission, the liability thus arising does not come within the exception in this provision. *Butler-Kyser Mfg. Co. v. Mitchell*, (1915) 195 Ala. 240, 70 So. 665.

Where goods are consigned under a contract providing that title thereto remains in the consignor, the consignee to hold the proceeds of any sale separate and apart in trust for the use and benefit of the consignor, the consignee is not acting in a

fiduciary capacity within the meaning of this provision. *Michelin Tire Co. v. Hearn*, (Tex. Civ. App. 1916) 188 S. W. 943.

A debt created by fraud, embezzlement, misappropriation, or defalcation while acting in a fiduciary capacity will not be released by a discharge in bankruptcy. *Arnold v. Smith*, (1917) 137 Minn. 364, 163 N. W. 672.

1912 Supp., p. 579, sec. 18a.

Irregularities in proceedings.—As to the distinction between irregularities in proceedings leading to the adjudication which are errors of procedure and not jurisdictional defects, see *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

Petition—Sufficiency.—The sufficiency of a petition in involuntary bankruptcy in respect to the description of the claim of the petitioners is to be tested by the rules of pleading which would govern a declaration or a bill in equity in an action or suit brought to enforce such claims. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

A petition has been held sufficient though it only alleges that a confession of judgment was made with an intent to prefer, without setting forth the facts and circumstances from which such intent may be inferred. *In re Musgrove Min. Co.*, (D. C. Idaho 1916) 234 Fed. 99.

Amendment of petition.—Where a defect is easily amendable the petition will not be dismissed without opportunity afforded the petitioners to make the required amendment. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

The exercise of the jurisdiction to amend is within the sound discretion of the court, having in mind the interests of the creditors. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

The fact that an application to amend a petition is not in writing does not affect jurisdiction to act thereon where notice has been waived by express written consent to the amendment. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

Verification.—While an amendment does not affirmatively appear to have been verified as required by General Order in Bankruptcy No. XI, yet where the order stated that "said amendment was made accordingly on the face of the bill," meaning, of course, the petition—it was within the power of the court to permit verification later. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

Service—Waiver.—See to same effect as original annotation. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

Service on Sunday.—Service of subpoena and of copy of petition in an involuntary bankruptcy proceeding may be made upon a Sunday. *Lamar-Wells Co. v. Hamilton Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 54, 150 C. C. A. 256.

Dismissal of proceedings.—*Suit pending in state court.*—The fact that a suit is pending in a state court between one of the petitioners in the bankruptcy proceedings and the indorsers on a note is not a sufficient ground for the dismissal of the proceedings. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

1912 Supp., p. 581, sec. 18b.

Right to appear or plead.—“From the fact that the Bankruptcy Act (section 18b) makes express provision for the exercise by the bankrupt or by any creditor of a right to appear and plead to a petition for involuntary bankruptcy it does not follow that it was a purpose of the act to withhold from the court of bankruptcy the power of permitting participation in the proceedings by other parties shown to be interested in the result of them. *Jackson v. Wauchula Mfg., etc., Co.*, (C. C. A. 5th Cir. 1916) 230 Fed. 409, 144 C. C. A. 551, wherein the court so stated where the liability to the petitioner was for a personal injury not “wilful or malicious.”

1912 Supp., p. 582, sec. 18c.

Amendment.—Where the certificate of the notary is a falsification there is no verification and the petition cannot be amended. *In re Frank*, (E. D. Pa. 1916) 234 Fed. 665.

1912 Supp., p. 583, sec. 18d.

Effect of adjudication.—An adjudication, of itself, imports the existence of all the jurisdictional facts. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

Exclusive jurisdiction.—“Where a valid adjudication of bankruptcy has been made by a court of bankruptcy, the jurisdiction of that court to administer the property of the bankrupt is exclusive, and it cannot properly surrender its jurisdiction to any other court.” *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

Where a surviving partner has been adjudicated a bankrupt this carries with it the entire rights and obligations of the firm as it existed prior to the copartner's death. *In re Stringer*, (E. D. N. Y. 1916) 234 Fed. 454.

Assignment.—If an adjudication in bankruptcy follows an assignment for the benefit of creditors it has the effect of automatically and of its own force avoiding the assignment. *In re Neuberger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633.

Vacating adjudication.—Proceedings in bankruptcy are in rem, binding all parties interested in the bankrupt's property. If a creditor desires to vacate an adjudication, and his motion is addressed to the sound discretion—that is, the judicial discretion—of the judge, it is incumbent upon him to show that the vacation of the adjudication would result in benefit to him; i. e., that on trial of the issue tendered the result would probably be favorable to his contention. *Abbott v. Wauchula Mfg., etc., Co.*, (C. C. A. 5th Cir. 1917) 240 Fed. 938, 153 C. C. A. 624.

In a voluntary proceeding, where an adjudication in bankruptcy immediately follows the filing of a petition good on its face, without opportunity to any interested person to question the allegations of the petitioner, it seems to be entirely settled that allegations as to residence, domicile, and principal place of business are jurisdictional matters, and a petition to vacate upon the ground that the court obtained no jurisdiction of the subject matter, if these facts are not as alleged, is the correct practice. *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 223 Fed. 984.

Jurisdictional grounds.—Where the petition is in due form and is properly verified, and avers all the jurisdictional and other facts essential to entitle the petitioner to have an order entered adjudicating it bankrupt, after the adjudication has been made, any party who has the requisite interest in the proceedings may move to vacate the adjudication upon jurisdictional grounds. *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

1912 Supp., p. 586, sec. 18g.

Simultaneous pendency of voluntary and involuntary proceedings.—While the mere pendency of the involuntary petition does not take away jurisdiction to entertain the voluntary petition and to adjudicate thereunder, the duty arises to choose the course for the best interests of creditors. In many cases such interests are best subserved by adjudicating upon a voluntary petition, thus saving delay, litigation and expense in procuring an adjudication; but notice of the filing of the voluntary petition should be given to the petitioning creditors, and opportunity thus afforded to determine the course most likely to conserve the interests of the estate. The fact, however, that adjudication was made under the voluntary petition did not preclude jurisdiction to protect the rights of creditors under the involuntary petition. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619. See also *In re Continental Coal Corp.*, (C. C. A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

1912 Supp., p. 586, sec. 19a.

Right to trial by jury.—In an action at law to recover alleged preferential cash payments the defendant has a right to have the suit tried by jury, and unless such right has been either expressly or impliedly waived a reference to the master is unauthorized. *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Where the distribution of the fund is the only issue before the court, there is no question, under the Bankruptcy Act or other law, to be submitted to a jury for determination. *In re Gibbons*, (W. D. Wash. 1915) 225 Fed. 420.

Waiver of right to jury trial—Failure to demand.—“It is the general and well-settled rule that parties are presumed to have waived a jury, even in the absence of written stipulation, whenever it appears that they were present at the trial in person or by counsel and made no demand for a jury.” *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Where a bankrupt answered petitions against him denying both insolvency and acts of bankruptcy but did not ask for a jury trial and an order was immediately entered directing the referee to hear the issues as special master, it was held that the refusal of a separate demand filed on the next court day but one was not an abuse of discretion. *In re Wester*, (C. C. A. 3d Cir. 1917) 242 Fed. 465, 155 C. C. A. 241.

1912 Supp., p. 589, sec. 21a.

Right of examination.—“It is now settled by the Supreme Court, notwithstanding many decisions in the lower courts to the contrary, that the moment a petition in bankruptcy is filed, whether voluntary or involuntary, and a receiver appointed, the administration of the estate has begun, and an order may be granted under section 21a for the examination of the bankrupt or any designated witness or witnesses.” *In re Emigh*, (N. D. N. Y. 1917) 243 Fed. 988.

Scope of examination—Issue of solvency.—“It would be a perversion of the purpose of section 21a to exercise the power it confers to obtain evidence for use on the trial of the issue of solvency or insolvency. Section 3b contains the provision applicable to the examination of the alleged bankrupt with reference to that issue. *Rawlins v. Hall-Epps Clothing Co.*, 217 Fed. 884, 133 C. C. A. 594; *Cameron v. United States*, 231 U. S. 710, 34 Sup. Ct. 244, 58 L. ed. 448. By the terms of the last-mentioned provision the only effect given to the alleged bankrupt's failure to attend and submit to the examination provided for is that ‘the burden of proving his solvency shall rest upon him.’” *Abbott v. Wauchula Mfg.*

etc., Co., (C. C. A. 5th Cir. 1916) 229 Fed. 677, 144 C. C. A. 87.

Conduct of examination—Competency of wife.—The competency of a wife to testify against her husband in a civil proceeding under this Act is determined by state law. *In re Kessler*, (E. D. Pa. 1915) 225 Fed. 394.

Books and papers.—Where a state law gives to a private banker the right to apply within a certain number of days for a restitution of possession of papers and books seized by the state banking department, the privilege thus conferred must be asserted or it is lost and it has been held that the court will not direct the state district attorney to deliver such papers and books to the receiver in bankruptcy. *In re Mandel*, (S. D. N. Y. 1915) 224 Fed. 643.

Right of witness to counsel.—Supplementing the original note, see *In re Emigh*, (N. D. N. Y. 1917) 243 Fed. 988.

1912 Supp., p. 593, sec. 21e.

Force of order.—A certified copy of an order showing approval of the trustee's bond is under this section conclusive evidence of the vesting in him of title to the property of the bankrupt. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

1912 Supp., p. 593, sec. 21f.

Certified copy of order as evidence.—In a suit against the bankrupt, subsequent to his discharge, upon a debt existing at the time of the filing of the petition, the production of a certified copy of the order of discharge makes a prima facie defense, and the burden is cast upon the plaintiff to show that his debt came within the exceptions. *Claffin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

Where a discharge in bankruptcy is pleaded as a defense to an action, and the plea is traversed, the burden is upon the defendant to prove his discharge; and, to carry this burden, he must put in evidence a certified copy of the order granting the discharge. *Williams v. Millen First Nat. Bank*, (Ga. 1917) 94 S. E. 73.

1912 Supp., p. 594, sec. 23a.

Adverse claimants.—Where facts are undisputed, and only a question of law is involved, and the question of law is debatable, the person resisting is not an adverse claimant. *Alco Film Corp. v. Alco Film Service*, (C. C. A. 2d Cir. 1916) 234 Fed. 55, 148 C. C. A. 71.

Jurisdiction of state court.—This section does not have the effect of depriving a state court of jurisdiction of a suit brought by a third party claiming title, and right of possession of property, though the trustee claims that the property is in his actual possession as trustee.

tee, as an asset of the estate, where it appears that the bankruptcy court never by summary process, or any kind of process, took actual possession of the property, and never by writ or otherwise authorized the trustee to do so, and never claimed possession of it as an asset of the estate. *Peters v. Bowers*, (1916) 61 Colo. 534, 158 Pac. 1101.

1912 Supp., p. 595, sec. 23b.

- I. Jurisdiction of adverse claims.
- II. Jurisdiction as affected by possession.
- III. Jurisdiction by consent.
- IV. Recovery of preferential and fraudulent transfers.
- V. Summary and plenary jurisdiction.
- VI. Jurisdiction of state courts.

I. JURISDICTION OF ADVERSE CLAIMS (p. 595)

Bona fide adverse claims.—“*Claims made after petition filed*, but arising before that time, constitute adverse claims, when the fund is in possession of one who makes no adverse claim.” *In re Interocean Transp. Co.*, (S. D. N. Y. 1916) 232 Fed. 409.

Jurisdiction—rule stated.—“We understand the rule in all such cases to be that if a real adverse claim exists, as distinguished from one which is merely colorable, the claimant cannot be compelled against his will to try the issue in the court of bankruptcy. Whether the claim is real or colorable does not depend upon whether it turns upon a question of fact or upon a question of law. Does the claim rest upon mere pretense of fact or of law? Is it put forward in good faith, and in that sense is it real? Or is it put forward in bad faith, and therefore unreal? If there is a real question either of law or of fact, the claimant need not submit it to the court of bankruptcy, unless he consents to do so; but the trustee must institute his independent action in a court having jurisdiction of the subject-matter and have the claim regularly adjudicated, as the bankrupt himself must have done, had bankruptcy proceedings not been pending.” *In re Midtown Contracting Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 56, 155 C. C. A. 586.

Adverse claimant.—A petitioning creditor who after adjudication has received money the title to which has already passed by operation of law to the trustee has been held not to be an adverse claimant. *In re O. L. Ward*, (D. C. N. D. Cal. 1917) 242 Fed. 999.

II. JURISDICTION AS AFFECTED BY POSSESSION (p. 597)

Possession of property gives jurisdiction thereover.—See to the same effect as original annotation, *In re Cobb's Consol.*

Gas, (D. C. Mass. 1916) 233 Fed. 458; *In re Dialogue*, (D. C. N. J. 1916) 241 Fed. 290.

“It is well settled that the general rule, that possession of the res vests the court which has first acquired jurisdiction with power to hear and determine all controversies relating thereto, and for the time being disables other courts of coordinate jurisdiction from exercising a like power, and from interfering with the former court, is applicable to courts of bankruptcy.” *In re Schmidt*, (D. C. N. J. 1915) 224 Fed. 814.

“A bankruptcy court has no authority or jurisdiction, in the absence of lawful possession of the property by its officers, to draw to itself and determine in a summary proceeding the adverse claim of one claiming for his own benefit a lien upon or title to property of the bankrupt which was created, or is claimed to have been created, otherwise than by the legal proceeding specified in section 67c, 67f, prior to the filing of the petition in bankruptcy.” *American Trust, etc., Bank v. Ruppe*, (C. C. A. 8th Cir. 1916) 237 Fed. 581, 150 C. C. A. 463.

Possession through agreement.—The fact that control of property after it had been relinquished by the trustee under a decree of court was only regained through agreement of the party into whose possession the property had been surrendered, does not impair the jurisdiction of the court to determine the ownership thereof. *In re Traunstein*, (D. C. Mass. 1915) 225 Fed. 317.

III. JURISDICTION BY CONSENT (p. 599)

Effect of consent.—See to same effect as original annotation, *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371.

IV. RECOVERY OF PREFERENTIAL AND FRAUDULENT TRANSFERS (p. 600)

Jurisdiction to recover property fraudulently or preferentially transferred.—See to same effect as original annotation, *Winslow v. Starr*, (S. D. N. Y. 1916) 233 Fed. 305.

Suit against transferee of property.—In a case where a creditor of the bankrupt accepted goods in payment of some of the indebtedness to him the court said: “His claim of right to such goods is of substance, and not a mere fictitious or colorable one. The questions whether he obtained a preference in such transaction or whether it was tainted with fraud are not pertinent upon the issue whether such creditor is an adverse claimant. The referee had jurisdiction to issue the rule to show cause, there being sufficient in the affidavits upon which such rule was based to justify the inquiry; but as soon as it developed that a transfer of property from the bankrupts to one of their creditors had been made, to discharge

some of their indebtedness to him, and that such creditor refused his consent to the referee's inquiring into the legality of such transaction in a summary way, it was the duty of the referee to stay such proceedings and remit the trustee to a plenary suit under section 23b of the Bankruptcy Act. . . . As such creditor never consented to such summary jurisdiction, but always protested against it, the order under review is reversed, and the cause remanded, that proceedings plenary in their nature may be instituted, if the same be deemed advisable." *In re Vallozza*, (D. C. N. J. 1915) 225 Fed. 334.

V. SUMMARY AND PLENARY JURISDICTION (p. 601)

General principles controlling jurisdiction.—See *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Summary jurisdiction.—See to same effect as original annotation, *Courtney v. Shea*, (C. C. A. 6th Cir. 1915) 225 Fed. 358, 140 C. C. A. 382.

"The District Court sitting in bankruptcy has jurisdiction to draw to itself and to determine by summary proceedings after reasonable notice to the claimants all controversies between the trustee and adverse claimants over liens upon and the title and possession of (1) property in the possession of the bankrupt when the petition in bankruptcy is filed, (2) property held by third parties for him, (3) property lawfully seized by the marshal as the bankrupt's under clause 3 of section 2 of the bankruptcy law, and (4) property claimed by the trustee which has been lawfully reduced to actual possession by the officers of the court." *Darrough v. Claremore First Nat. Bank*, (Okla. 1916) 156 Pac. 191.

Jurisdiction in summary proceedings, being of statutory authority, and based upon necessity to prevent threatened loss to the rightful owners of property, or defiant disobedience to the orders and decrees of courts, should not be enlarged by construction or implication. *In re Cox-Rackley Co.*, (E. D. N. C. 1917) 245 Fed. 367.

Possession as requisite to summary jurisdiction.—The summary jurisdiction of the court can be sustained only when the bankruptcy court, through the acts of its officers, such as referees, receivers, or trustees, has taken possession of the res as the property of the bankrupt. *In re Schmick Handle, etc., Co.*, (D. C. Me. 1916) 233 Fed. 446.

Where the claimant has submitted to the jurisdiction of the court, and has placed the funds in the hands of the officers of the court, summary process is the proper method to determine the final ownership of the fund. *In re Schmick Handle, etc., Co.*, (D. C. Me. 1916) 233 Fed. 446.

Where book accounts have been assigned to a creditor prior to bankruptcy and collections have been made thereon, the assignee's possession prevented such collections from becoming a part of the res which passed into custodia legis with the filing of the petition in bankruptcy and in the absence of consent or waiver these collections cannot be recovered by summary action in proceedings before a referee. But as to uncollected accounts it has been held that the referee has jurisdiction to summarily determine the right thereto. *In re Gottlieb* (D. C. N. J. 1917) 245 Fed. 139.

Bona fide adverse claim.—A federal court may not in summary proceedings determine the sufficiency of a truly adverse claim, but the court has granted similar relief where the claim, made by the possessor of the property, after fraudulent transfer, is founded upon patent and flagrant fraud. *In re Resnek*, (S. D. N. Y. 1917) 246 Fed. 879.

"The courts have held in numerous cases that a stranger to the proceedings in bankruptcy, who sets up an adverse title to property which is claimed by the trustee as assets of the bankrupt, cannot be compelled to submit his claim to adjudication in a summary proceeding in the court of bankruptcy provided his claim is made with the apparent intention of defending it in good faith and is not merely colorable, but is entitled to be heard in a plenary suit." *In re Midtown Contracting Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 56, 155 C. C. A. 586.

The title to property in the possession of a third party under a claim adverse to that of the bankrupt estate cannot be asserted in summary proceedings. *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Effect of failure to object to jurisdiction.—Acquiescence in summary proceedings may operate as a waiver of the right to object. *In re Hopkins*, (C. C. A. 2d Cir. 1916) 229 Fed. 378, 143 C. C. A. 469.

Necessity of plenary action.—See to same effect as original annotation, *Courtney v. Shea*, (C. C. A. 6th Cir. 1915) 225 Fed. 358, 140 C. C. A. 382; *In re McCracken*, (S. D. Cal. 1916) 234 Fed. 776; *In re Vocks*, (W. D. Ky. 1917) 242 Fed. 963.

Effect of amendments of 1903 and 1910.—The jurisdiction of a plenary suit by a trustee to recover a debt due from the bankrupt's estate as it stood before the amendments of 1903 and 1910 has been unaffected by those amendments. *De Friece v. Bryant*, (E. D. Ky. 1916) 232 Fed. 233.

Suit against adverse claimant.—A federal court has no jurisdiction of plenary suit by the trustee in bankruptcy against an adverse claimant, save as provided in section 23b. *De Friece v. Bryant*, (E. D. Ky. 1916) 232 Fed. 233.

Suit against stockholder.—A proceeding as against the individual stockholder upon his refusal to pay his delinquent subscription is not a mere proceeding in bankruptcy for the collection of the assets of the estate, but a suit plenary in its nature and subject to all the limitations expressed in section 23b of the Bankruptcy Act. *Kelly v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

Action for concealment or conversion by bankrupt and agents.—See *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371.

Application of General Order XXXVII.—General Order XXXVII applies only to equity proceedings, properly so called, and not to summary proceedings in bankruptcy. Even in summary proceedings the court allows the respondent full opportunity for hearing and defense, but it is not limited by the technical rules of procedure in equity. *In re Cunney*, (D. C. Mass. 1904) 225 Fed. 426.

VI. JURISDICTION OF STATE COURTS (p. 602)

Failure or refusal to assert jurisdiction.—Where it appears that the federal court has not only failed to assert exclusive jurisdiction, but also that it has refused to assert or claim it, the state court before which a general creditor's bill is pending not only may, but should proceed to a determination of the questions before it. *Morgan v. Dayton Coal, etc., Co.*, (Tenn. 1916) 134 Tenn. 228, 183 S. W. 1019, Ann. Cas. 1917E 42.

Property in lawful possession of state court.—Where the debtor's property is in the hands of receivers appointed by a state court and its assets are being administered satisfactory to a large majority of the creditors, a petition by a small minority to have the debtor adjudged a bankrupt will be dismissed, it also appearing that bankruptcy proceedings would enure only to the detriment of the creditors generally. *In re McKinnon Co.*, (D. C. E. D. N. C. 1916) 237 Fed. 869.

The court which first assumed control and had jurisdiction of the property or fund may retain it all for the purpose of a final order or decree where the rights of the parties urging claims that conflict with one another on the same property or fund would be the same whether presented in the state court or in bankruptcy court. *Pietri v. Wells*, (1915) 137 La. 1087, 69 So. 847.

1912 Supp., p. 603, sec. 24a.

I. CONTROVERSIES ARISING IN BANKRUPTCY PROCEEDINGS (p. 603)

Intervention.—An intervention in bankruptcy proceedings where claimants assert liens against particular funds has been

held to give rise to a controversy in bankruptcy proceedings within the meaning of this section. *Emerson v. Castor*, (C. C. A. 6th Cir. 1916) 236 Fed. 29, 149 C. C. A. 239.

The appearance of the mortgagees in response to notice of the petition of the mortgagor's trustees in bankruptcy for the marshaling of assets, the sale of the encumbered property, and the application of the proceeds to the payment of all liens thereon, and their assertion of their conflicting rights under their respective mortgages, and their attempt to have them enforced against the proceeds, has been held to be the equivalent of an affirmative intervention, and, when taken in connection with the trustees' petition, brought into the bankruptcy proceedings a "controversy" over which the circuit court of appeals was vested, by the Bankrupt Act of July 1, 1898 (30 Stat. at L. 544, ch. 541) § 24, with the same appellate jurisdiction which, under the Judicial Code, § 128, it possesses in other cases. *Moody v. Century Sav. Bank*, (1915) 239 U. S. 374, 36 S. Ct. 111, 60 U. S. (L. ed.) 336.

Dismissal of petition made by trustee.

—Where the issues made in the petition and return were (1) the title of the trustee to certain assets claimed by him to be in existence as part of the bankrupt estate which the bankrupts claimed should not have been embraced in their schedules, and which, they joined their agents in saying, were either not assets at all, or were assets belonging to their agents; and (2) an accounting by the bankrupts and their agents for the proceeds of cotton and other property disposed of, it was said that the questions were not solely between the bankrupts or the trustee and their creditors, but between the trustee and the bankrupts, and also the bankrupts' agents, and it was clearly a "controversy arising in bankruptcy proceedings," as distinguished from a "proceeding in bankruptcy," and therefore is properly here by appeal under section 24a, rather than by petition to superintend and revise under section 24b. *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371.

Jurisdictional amount.—The jurisdiction given by this section is not in terms affected by the amount involved. *Emerson v. Castor*, (C. C. A. 6th Cir. 1916) 236 Fed. 29, 149 C. C. A. 239.

Mode of appeal.—Where there is a doubt as to correct procedure for obtaining a review of an order both the methods provided by sections 24a and 24b may be resorted to in which case the court must determine which of the two it is authorized to entertain. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Decisions held appealable.—A decree directing the payment to the trustee of the proceeds of the sale of a stock of goods

on which a creditor, a bank, claimed a lien. *Scandinavian-American Bank v. Sabin*, (C. C. A. 9th Cir. 1915) 227 Fed. 579, 142 C. C. A. 211.

A controversy as to the ownership of a fund claimed by the trustee and the appellee. *Wuerpel v. Commercial Germania Trust, etc., Bank*, (C. C. A. 5th Cir. 1916) 238 Fed. 269, 151 C. C. A. 285.

An order allowing a claim as a preferred claim. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Decisions held not appealable.—An order made ostensibly in a bankruptcy proceeding, allowing counsel fees. *In re Jacobson*, (C. C. A. 3d Cir. 1917) 239 Fed. 79, 152 C. C. A. 129.

An order relating to a claim secured by a lien on the assets of the bankrupt. *In re Monarch Acetylene Co.*, (C. C. A. 2d Cir. 1917) 245 Fed. 741, 158 C. C. A. 143.

1912 Supp., p. 611, sec. 24b.

Appeal or petition to revise as exclusive or optional right.—See to same effect as original annotation, *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

It is now the settled law of this circuit that the remedies by appeal and petition to revise are mutually exclusive. *Henkin v. Fousek*, (C. C. A. 8th Cir. 1917) 246 Fed. 285.

Where there is a doubt as to the correct procedure for obtaining a review of an order both the methods provided by sections 24a and 24b may be resorted to in which case the court must determine which of the two it is authorized to entertain. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Appeal united with petition.—Resort may be had to both appeal and petition to bring up for review rulings complained of, in order to avoid a mistake in remedy. *Chavelle v. Washington Trust Co.*, (C. C. A. 9th Cir. 1915) 226 Fed. 400, 141 C. C. A. 230.

Time for filing petition.—A petition to revise must be taken within ten days after the original order was entered. *In re John M. Linck Constr. Co.*, (C. C. A. 2d Cir. 1915) 225 Fed. 488, 140 C. C. A. 18.

A petition to revise an order making an allowance to the trustee's attorney must be taken within ten days after the order was entered. *In re John M. Linck Constr. Co.*, (C. C. A. 2d Cir. 1915) 225 Fed. 488, 140 C. C. A. 18.

The petition to revise will be dismissed where it is not brought within ten days after entry of the order sought to be reviewed as prescribed by equity rule 38. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 53, 147 C. C. A. 123.

When no rule of court prescribes time.

—There are no terms in bankruptcy, and no provision in the statute limiting the time within which an order of the referee may be reviewed or an order of the District Court reheard, and where there is no rule of court a proceeding to revise will not be regarded as too late. *In re Barker Piano Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 522, 147 C. C. A. 408.

"Matter of law."—A proceeding which may be revised in matters of law means some formal exercise of judicial power affecting asserted rights of a party. *In re Berthoud* (C. C. A. 2d Cir. 1916) 238 Fed. 797, 151 C. C. A. 647.

Only questions of law can be considered. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1915) 224 Fed. 103, 139 C. C. A. 659; *Henkin v. Fousek*, (C. C. A. 8th Cir. 1917) 246 Fed. 285; *In re Nankin*, (C. C. A. 2d Cir. 1917) 246 Fed. 811.

And the court is limited to a consideration of the questions of law arising out of the facts found or conceded. *Kinthead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

And where a case involves a consideration and finding of facts it must be disposed of on appeal and not by petition to revise. *Henderson v. Morse*, (C. C. A. 8th Cir. 1916) 235 Fed. 518, 149 C. C. A. 64.

Revising testimony.—On a petition to revise the court is neither required nor permitted to review the testimony. *Olmsted-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 257. See also *Olmsted-Stevenson Co. v. Langdorf*, (C. C. A. 9th Cir. 1916) 231 Fed. 76, 145 C. C. A. 264; *Moore Dry Goods Co. v. Brooks*, (C. C. A. 8th Cir. 1917) 240 Fed. 943, 153 C. C. A. 629.

Sufficiency of evidence.—A review of all controverted and uncontroverted facts to determine whether there is any substantial evidence to sustain the order, is a review as to a matter of law within the provisions of section 24b of the Bankruptcy Act, is well settled. *In re Kuhn Bros.*, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

Questions and orders reviewable not reviewable on petition.—*Finality of order necessary.*—"There must be a certain degree of finality about these administrative orders before they can be reviewed; if every order were reviewable, proceedings could easily be so tied up and prolonged that the situation would become intolerable. But where a fairly separable subject has been finally disposed of, so that rights have been definitely determined, and practically nothing remains to be done in that respect, such a subject is ready for review." *In re Pechin*, (C. C. A. 3d Cir. 1915) 227 Fed. 853, 142 C. C. A. 377.

An order of the district court refusing to allow a specification of objection to discharge to be filed or to be amended has sufficient finality to permit of its being reviewed. *In re Pechin*, (C. C. A. 3d Cir. 1915) 227 Fed. 853, 142 C. C. A. 377.

Order setting aside discharge.—An order setting aside a discharge is not one denying a discharge within the meaning of section 25a (2) and the appropriate remedy is one to superintend and revise in matter of law under section 24b. *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378.

Order as to intervention.—An order of the bankruptcy court, granting or refusing to grant leave to a party to intervene for the purpose of contesting the grounds upon which an adjudication in an involuntary bankruptcy proceeding is sought, may be reviewed. *Ogden v. Gilt Edge Consol. Mines Co.*, (C. C. A. 8th Cir. 1915) 225 Fed. 723, 140 C. C. A. 597.

Review of order denying motion to vacate adjudication.—There is some question as to whether the review of an order denying a motion to vacate an adjudication in bankruptcy should be by appeal or by petition to revise; but the weight of authority seems to support the proposition that the review is by petition to revise. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 53, 147 C. C. A. 123.

As an order denying the application of a creditor to have the judgment of the court adjudicating the debtor a bankrupt vacated and set aside is not appealable it seems that as to matters of law it may be reviewed by a petition to revise. *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 913, 146 C. C. A. 109.

An order fixing the compensation of a referee involves a "proceeding in bankruptcy" and is reviewable under this section. *Kinthead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Order in omnibus proceeding.—A petition to revise is the proper remedy to review an order in an omnibus proceeding, begun to determine the rights of various claimants to property in the hands of a receiver. *In re Pierson*, (C. C. A. 2d Cir. 1916) 233 Fed. 519, 147 C. C. A. 405.

An order requiring a bankrupt to turn over a specified amount of money to the trustee in bankruptcy is a step in bankruptcy proceedings reviewable by petition to revise under section 24b. *In re Shidlovsky*, (C. C. A. 2d Cir. 1915) 224 Fed. 450, 140 C. C. A. 654.

Injunction order.—Where the merits of a claim, the prosecution of an action for which has been enjoined have not been decided it has been decided that a petition to revise the injunction order and not appeal, is the proper remedy. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Allowance of counsel fees.—This section provides the applicable mode of re-

view of an order denying an allowance for counsel fees for services rendered in resisting a confirmation of a composition. *In re Kinnane Co.'s Estate*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Where the only questions involved were questions of fact as to whether an allowance to attorneys was a reasonable compensation for the services rendered by them and whether the allowance should be apportioned by the court it was held that there were no questions of law for the court to revise. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1915) 224 Fed. 103, 139 C. C. A. 659.

Establishment of lien.—A proceeding in bankruptcy to establish a lien is reviewable by petition to superintend and revise and it is proper to dismiss an appeal. *J. M. Radford Grocery Co. v. Powell*, (C. C. A. 5th Cir. 1915) 228 Fed. 1, 142 C. C. A. 457.

Decree of state court.—A petition to revise is the proper mode to call in question a decree of a state court directing the receiver to surrender possession of the assets after deducting a sum allowed as compensation to the receiver and his attorney. *State v. Angle* (C. C. A. 8th Cir. 1916) 236 Fed. 44, 149 C. C. A. 644.

Disputed questions of fact.—The court cannot determine any conflicting inferences of fact on a petition to revise an order postponing the claims of the petitioners. *In re Bean*, (C. C. A. 6th Cir. 1916) 230 Fed. 405, 144 C. C. A. 547.

Security for costs on petition to review.—For writs of error at common law, also for the ordinary appeals in equity, the statutes of the United States, or the rules of the courts, make provisions for security for costs on allowance of the citation, or subsequent thereto, but there is said to be no statute, or rule, or any settled practice, giving a right to a respondent or appellee to apply for security for costs on a petition to review matters of law in bankruptcy proceedings. *In re Vidal*, (C. C. A. 1st Cir. 1915) 230 Fed. 603, 145 C. C. A. 13.

1912 Supp., p. 623, sec. 25a.

Cases appealable in bankruptcy.—The only cases in which an appeal can be taken in bankruptcy proceedings are those mentioned in section 25a of the Bankruptcy Act. *Ogden v. Gilt Edge Consol. Mines Co.*, (C. C. A. 8th Cir. 1915) 225 Fed. 723, 140 C. C. A. 597.

The claim of a petitioner being for unreturned goods sold on credit has been held to constitute a controversy arising in bankruptcy proceedings, which is appealable under section 25a, and not reviewable under section 24b. *Howard D. Thomas Co. v. Beharrell*, (C. C. A. 9th Cir. 1916) 229 Fed. 691, 144 C. C. A. 101.

Where it appeared that the appellant recognized the title to and possession of a

fund in the trustee for administration under the orders of the bankruptcy court, and asserted its right to have it so administered or distributed as to recognize its equitable title to the fund it was held that this constituted a proceeding in bankruptcy, as distinguished from a controversy arising in bankruptcy proceedings, within the meaning of sections 25(a) and 24(a), respectively, and as such proceeding it was subject to the provisions of section 25(a), and should have been appealed if at all, in accordance with its provisions. *Barton Lumber, etc., Co. v. Prewitt*, (C. C. A. 8th Cir. 1916) 231 Fed. 919, 146 C. C. A. 115.

Conditional order.—An order which is conditional is not appealable. *In re Sutter Hotel Co.*, (C. C. A. 9th Cir. 1915) 241 Fed. 367, 154 C. C. A. 247.

The dismissal of a rule to compel the conveyance of real estate to the highest bidder has been held to be a step in a bankruptcy proceeding from which no appeal lies. *Untereiner v. Camors*, (C. C. A. 5th Cir. 1916) 228 Fed. 890, 143 C. C. A. 288.

Time for taking appeal.—Where the petition for an appeal, accompanied by an assignment of errors, was filed in the District Court within ten days from the date of the decree, and was promptly presented to a judge having authority to allow the appeal it was held that this was a presentation to the court which made the decree of the application for an appeal within the time allowed by the statute; and the order allowing the appeal, which was made on the third day after such presentation, had relation back to the date of the application therefor. *Robertson Banking Co. v. Chamberlain*, (C. C. A. 5th Cir. 1916) 228 Fed. 500, 143 C. C. A. 82.

Questions of fact.—In equity cases, under the new rules, appeals present the controversy for determination de novo as under the old rules; but where the trial judge has heard the testimony in open court, his finding of fact should not be disturbed, unless the record very clearly discloses either a misapprehension of the testimony or a mistaken application of the law. *In re Kaplan*, (C. C. A. 7th Cir. 1916) 234 Fed. 866, 148 C. C. A. 464.

Where the trial judge has found as a fact that the debtor was then in a bankrupt condition, within the statutory definition, that finding cannot be reviewed in the absence of the evidence on which it was based. *Abele v. Beacon Trust Co.*, (1917) 227 Mass. 427, 117 N. E. 834.

The court on appeal should not reverse the finding of the trial court upon a pure question of fact, where the evidence justifies the finding, even if the appellate court might have reached a different conclusion upon the evidence. *Brookheim v. Greenbaum*, (C. C. A. 2d Cir. 1915) 225 Fed. 763, 141 C. C. A. 89.

Findings of referee or master.—"The findings of fact by the master and affirmed by the court are presumptively correct and will be upheld on appeal, if supported by substantial evidence, or unless a clear mistake is shown." *Sheinberg v. Hoffman*, (C. C. A. 3d Cir. 1916) 236 Fed. 343, 149 C. C. A. 475.

Record on appeal.—Under order No. 36 of the General Orders in Bankruptcy the Circuit Court of Appeals cannot review or reverse the order of the District Court without having before it the testimony or record upon which that court acted. *In re Murphy*, (C. C. A. 9th Cir. 1916) 229 Fed. 988, 144 C. C. A. 270.

Dismissal of appeal—Decree appealed from not final or conclusive.—An appeal from a decree dismissing complainant's claim for a part of the demand set forth in the bill has been dismissed where it is apparent that the decree appealed from does not dispose of the whole case, and it is at least doubtful whether the decree complained of is even final and conclusive in the court below, under the general rule that orders and decrees in chancery may be altered, revised, or revoked during the term at which they were passed, or while the cause remains open for further proceedings. *Wuerpel v. Canal-Louisiana Bank, etc., Co.*, (C. C. A. 5th Cir. 1916) 231 Fed. 934, 146 C. C. A. 130.

1912 Supp., p. 632, sec. 25a (1).

Record on appeal.—Under Order No. 36 of the General Orders in Bankruptcy the Circuit Court of Appeals cannot review or reverse an order of the District Court denying adjudication and dismissing the petition without having before it the testimony or record upon which that court acted. *In re Murphy* (C. C. A. 9th Cir. 1916) 229 Fed. 988, 144 C. C. A. 270.

1912 Supp., p. 633, sec. 25a (2).

Order setting aside discharge.—An order setting aside a discharge is not one "denying a discharge" within the meaning of this section. "The object of the appeal there mentioned is to provide for bringing up the facts upon which either the original grant or denial of a discharge is based." *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378.

An order granting leave to amend specifications of objection to a petition for a discharge does not possess the degree of finality required to permit of its being reviewed. *In re Pechin*, (C. C. A. 3d Cir.) 227 Fed. 853, 142 C. C. A. 377.

1912 Supp., p. 634, sec. 25a (3).

[From allowance or rejection of claim.]

An order allowing a claim as a preferred claim, in excess of the jurisdictional

amount which is objected to on the ground that the claim is not a preferred one is appealable under this section. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Claim adverse to title of trustee.—Where the claim asserted by the petitioner is adverse to the title of the trustee, the petition to superintend and revise should be dismissed as appeal is the proper remedy. *American Piano Co. v. Heazel*, (C. C. A. 4th Cir. 1917) 240 Fed. 410, 153 C. C. A. 336.

1912 Supp., p. 635, sec. 25a (3).

[*Time for taking appeal hearing.*]

Judgment "rendered."—Where the date September 15, 1915, appeared at the end of the order, or judgment, of the District Court, in connection with the signature of the judge; but the filing date and the signature of the court clerk were shown at the commencement of the judgment under the date September 16th, it was held that the filing date rather than the other date, there shown indicated the time of rendition of the judgment in accordance with both the appearance docket and the journal of the court. *Paris First Nat. Bank v. Yerkes*, (C. C. A. 6th Cir. 1916) 238 Fed. 278, 151 C. C. A. 294.

Time for appeal.—If the appeal is not taken within the time fixed by statute, the right to take it is lost. *In re Stafford*, (D. C. Conn. 1917) 240 Fed. 155.

"And where the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter." *In re Stafford*, (D. C. Conn. 1917) 240 Fed. 155.

In Barton Lumber, etc., Co. v. Prewitt, (C. C. A. 8th Cir. 1916) 231 Fed. 919, 146 C. C. A. 115, it was held that because the amount involved was not five hundred dollars, or over, and because the appeal was not taken within ten days after the judgment appealed from was rendered, the appeal was improvidently allowed, and, on the authority of *Coder v. Arts*, (1909) 213 U. S. 223, 29 S. Ct. 436, 53 U. S. (L. ed.) 772, must be dismissed.

Order confirming composition.—Such an order is governed by this provision and a failure to appeal within the time specified is fatal to the right. *In re Brookstone Mfg. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 697, 152 C. C. A. 531.

The granting of a rehearing operates to extend the time of the taking effect of an order and therefore of the time of taking an appeal which is computed from the date the order is finally disposed of.

Todd v. Alden, (C. C. A. 8th Cir. 1917) 245 Fed. 462, 157 C. C. A. 624.

An order relating to a claim secured by a lien on the assets of the bankrupt is a proceeding in bankruptcy and, as such, an appeal therefrom must be taken within ten days. *In re Monarch Acetylene Co.*, (C. C. A. 2d Cir. 1917) 245 Fed. 741, 158 C. C. A. 143.

1912 Supp., p. 640, sec. 25b (1).

In order to be appealable under this section.—A decision of a Circuit Court of Appeals that a claim against a bankrupt estate for damages growing out of the anticipatory breach of an executory contract, while allowable as a provable debt for the term during which that court thought that the contract was mutually obligatory, should not be allowed beyond that period, is not reviewable in the Federal Supreme Court as presenting a federal question which would sustain a writ of error to a state court. *Central Trust Co. v. Chicago Auditorium Ass'n*, 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

1912 Supp., p. 645, sec. 27a.

A compromise for an amount much less than the value of the property was not approved, where a receiver claimed title to personal property listed in the bankrupt's schedules and the evidence was such as to prima facie throw on the claimant the burden of proving his title, which was not satisfactorily done. *In re Stier March Contracting Co.*, (E. D. Pa. 1916) 245 Fed. 223.

1912 Supp., p. 646, sec. 29b (1).

Concealment of assets.—Elements of offense.—"To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt after the filing of a petition against him, while a bankrupt, or after his discharge, and the property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear." *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Concealment by corporation.—Officers of a corporation may be prosecuted for concealment of the corporate property. *Wolfe v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 902, 152 C. C. A. 36.

Continuing concealments.—"The construction of continuous concealment has been declared by the courts principally in cases arising on applications for discharge under section 14b of the act. . . . The construction applies with equal force

to concealment of property under criminal section 29b. Each section deals with the same thing, though in different ways, and with different objects. The main difference in the provisions is in the proofs required in proceeding under them, and this is the difference that always maintains between proof required in civil and criminal actions." *Glass v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 65, 145 C. C. A. 253.

Omission to schedule property.—While omission of property, from a schedule, may be evidence of a fraudulent intent to conceal, we do not think that such omission in itself constitutes concealment of property." *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Criminal intent.—See to same effect as original annotation, *In re Lenweaver*, (N. D. N. Y. 1915) 226 Fed. 987.

Jurisdiction.—"Concealment is a positive act committed at some time or other with respect to a physical thing. It must, therefore, be done somewhere, and wherever done in violation of the statute, there and there alone has the court jurisdiction of the offense." *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Indictment—In general.—An indictment which, after alleging that defendants expected an involuntary petition in bankruptcy to be filed against one of them and an adjudication and the appointment of trustee in bankruptcy to follow, charges a conspiracy to conceal from such trustee certain property belonging to the expected bankrupt and specifically described, and sets forth overt acts done pursuant to the conspiracy, but does not allege that such owner was a bankrupt at the time of the conspiracy, is sufficient. *Friedman v. U. S.*, (C. C. A. 7th Cir. 1916) 236 Fed. 816, 150 C. C. A. 653.

Evidence.—Where the charge against a bankrupt was that just prior to bankruptcy he had purchased goods on credit, had sold the goods so obtained and had fraudulently concealed the proceeds of such sale from his trustee in bankruptcy, it was held that an objection to conversations with the defendant at the time he sold the merchandise and converted it into cash just prior to the bankruptcy was properly overruled. *Green v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 949, 153 C. C. A. 635.

1912 Supp., p. 650, sec. 29b (2).

False oath.—"The bankrupt is required to answer and give truthful answers so far as he answers at all, and there is an issue sufficient in law for the foundation of a charge of perjury in case the bankrupt willfully and knowingly gives false testimony regarding matters

pertinent to the inquiry being made." *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

The disposition made by the bankrupt of his property is a pertinent inquiry, when examined either before or after adjudication, and if, when examined on this subject, the bankrupt willfully and knowingly and contrary to his oath testifies falsely regarding such disposition, it must be that a charge of perjury will lie. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Evidence—Judgment roll in another action.—On the trial of a person for making false oaths in a bankruptcy proceeding, the admission of a judgment roll in another action to which he was also defendant has been held proper as bearing on his motive and the reason for his testimony in the bankruptcy proceedings. *Hopkins v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 367, 148 C. C. A. 465.

Indictment—Alleging false testimony.—An indictment alleging that the defendant, in answer to the question whether he had since a certain date transferred any money except certain specified sums, by answering in the negative, made a false and untrue answer in that he had paid a specified sum to his son, is not insufficient in failing to show that the attention of the bankrupt was called to the particular payment. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

An indictment charging conspiracy to make a false account of assets and liabilities must allege the commission of an overt act during the period of the conspiracy. *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 746.

1912 Supp., p. 651, sec. 29b (4).

Conspiracy.—In the case of a conspiracy to fraudulently receive personal property from the bankrupt in violation of this provision, it is not necessary in order to obtain a conviction that the property should be in the actual possession of the bankrupt where the conspiracy was formed, if it appears that it belonged to him or to the estate. *Knoell v. U. S.*, (C. C. A. 3d Cir. 1917) 239 Fed. 16, 152 C. C. A. 66.

1912 Supp., p. 653, sec. 31a.

Computation of time by months or years.—To the same effect as the original note, see *In re De Lewandowski*, (D. C. Mass. 1917) 243 Fed. 787.

Where the last day falls on Sunday one has until the next day in which to act. *Grafton v. Meikleham*, (C. C. A. 5th Cir. 1917) 246 Fed. 737.

1912 Supp., p. 653, sec. 32a.

Transfer for convenience of parties.—"The question of the convenience of par-

ties should be determined by the court in the domiciliary jurisdiction." *In re New Era Novelty Co.*, (D. C. N. J. 1916) 241 Fed. 298.

1912 Supp., p. 655, sec. 38a.

Jurisdiction.—The duties of the referee do not begin until the case has been referred to him; and his jurisdiction includes only such parts of the bankruptcy jurisdiction of the District Court as are carried by the reference. *In re Weidhorn*, (D. C. Mass. 1917) 243 Fed. 756.

Objection to jurisdiction.—Where objection is reasonably made to the jurisdiction of the referee, the subsequent filing of an answer to the merits does not operate as an assent to his jurisdiction. *In re Weidhorn*, (D. C. Mass. 1917) 243 Fed. 756.

Mode of review—General Order in Bankruptcy No. 27.—The statute provides for a review by the judge of the orders or findings of the referee, and the order determines how this review may be obtained by the aggrieved party, and what the duties of the referee are pertaining to such. The former directs the referee to act upon request of interested parties, and the latter suggests that he shall act on petition filed, setting out the error complained of. The petition for review is here wanting, and this accounts for the want of a certificate from the referee. The required petition becomes the foundation of authority and cannot be dispensed with in proceedings to review. When filed, the referee is bound to certify; without it there is no authority to review. *In re Avoca Silk Co.*, (M. D. Pa. 1917) 241 Fed. 607.

Time for review.—In the case of *In re Wister*, (E. D. Pa. 1916) 232 Fed. 899, it was declared that under General Order 27 (89 Fed. xl, 32 C. C. A. xxvii), which has all the force of statutory law, no review can be had of an order, except upon petition filed with the referee. Under the rules of this court, such petition must be filed with the referee within ten days after order, and, without this, a review cannot be had, except upon allowance by the court after notice and cause shown, etc. See also *In re Isert*, (N. D. Cal. 1915) 232 Fed. 484.

Weight of referee's findings of fact.—The findings of fact of a referee, where there is a conflict of evidence, are entitled to great weight; and they will not be disturbed except where they appear to be clearly erroneous. *In re Biehl*, (E. C. Pa. 1916) 237 Fed. 720; *In re Goldman*, (E. D. Pa. 1917) 241 Fed. 385; *In re Lavery*, (D. C. Mass. 1917) 244 Fed. 959; *In re Atkinson-Kerce Grocery Co.*, (N. D. Ga. 1917) 245 Fed. 481; *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864. See to same effect, *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790; *In re Gay*, (D. C.

Mass. 1915) 224 Fed. 127; *In re Murphy*, (D. C. Mass. 1915) 225 Fed. 392; *In re Miller*, (D. C. Mass. 1915) 225 Fed. 331; *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309; *Dallam v. Reber*, (C. C. A. 3d Cir. 1916) 229 Fed. 554, 144 C. C. A. 14; *Schmid v. Rosenthal*, (C. C. A. 3d Cir. 1916) 230 Fed. 818, 145 C. C. A. 128; *Aller-Wilmes Jewelry Co. v. Osborn*, (C. C. A. 8th Cir. 1916) 231 Fed. 907, 146 C. C. A. 103; *Walter A. Wood Mowing, etc., Mach. Co. v. Croll*, (C. C. A. 6th Cir. 1916) 231 Fed. 679, 145 C. C. A. 565; *Wilson v. Continental Bldg. etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18; *In re Ylia*, (N. D. N. Y. 1916) 233 Fed. 476; *In re Aronson*, (N. D. Ala. 1916) 233 Fed. 1022; *Henderson v. Morse*, (C. C. A. 8th Cir. 1916) 235 Fed. 518, 149 C. C. A. 64; *Chambers v. Continental Trust Co.*, (S. D. Ga. 1916) 235 Fed. 441.

The referee in bankruptcy is a judicial officer, performing certain functions as part of the bankruptcy court, and there can be no question but that his findings upon all matters within his jurisdiction have the same force and effect as if rendered by any court of general jurisdiction. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

The court will not disturb the findings of fact of a referee, based upon conflicting evidence, involving questions of credibility, unless there is most cogent evidence of mistake and miscarriage of justice. *In re New York, etc., Package Co.*, (D. C. N. J. 1915) 225 Fed. 219.

All presumptions with respect to the want or sufficiency of evidence are in favor of the validity of an order by the referee. *In re Farmers' Dairy Ass'n*, (S. D. Cal. 1916) 234 Fed. 118.

Evidence unreported.—The findings of a referee, which do not on the face of the report appear to be erroneous, are said to be final, where the evidence is not reported. *In re Golub*, (D. C. Mass. 1917) 245 Fed. 512.

Weight dependent on character of evidence.—"It is also a general rule that, if the finding be a deduction from established facts, it will not carry any great weight, for the court, having the same facts, may as well draw inferences or deduce conclusions as the referee. *In re New York, etc., Package Co.*, (D. C. N. J. 1915) 225 Fed. 219.

Appeals from interlocutory orders.—The practice of taking appeals from interlocutory orders is one not to be encouraged. It is the exceptional case where good to any one results from the practice. The evil consequences are to bring about conditions of interminable delays, which are insufferable. There is no call upon the court through petitions for review to attempt to regulate the minutest details

of the practice before referees. *In re Graboyes*, (E. D. Pa. 1915) 228 Fed. 574.

Discretionary orders.—An order continuing a meeting is largely within the referee's powers as a matter of discretion and will not be disturbed unless the referee has abused his discretion or erred as a matter of law. *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

Costs.—On review of an order of the referee directing the trustee to make a certain payment where neither litigant has been wholly successful the disbursements will be taxed equally between the trustee and the claimant. *In re Liberty Doll Co.*, (S. D. N. Y. 1917) 242 Fed. 695.

1912 Supp., p. 658, sec. 38a (2).

A referee appointed a special master to take evidence in aid of the court has full power and authority to administer the oath and conduct the examination. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

1912 Supp., p. 659, sec. 38a (3).

Ordering surrender of assets.—Although the referee may order the bankrupt to surrender property in his possession to the trustee, jurisdiction to make such an order is not acquired unless the bankrupt has notice of the proceeding and its purpose. *In re Atwater*, (S. D. N. Y. 1915) 227 Fed. 511.

Warrant for seizure of goods.—A referee is held to have authority under this section to issue a warrant for the seizure of goods in the possession of a transferee where the transfer was made within four months prior to the filing of the petition. *Darrough v. Claremore First Nat. Bank*, (Okla. 1916) 156 Pac. 191.

1912 Supp., p. 659, sec. 38a (4).

The referee has the specific power to hear and determine all questions arising upon claims filed and objections thereto. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

Turning property over to trustee—Practice generally.—In the case of *In re Nankin*, (C. C. A. 2d Cir. 1917) 246 Fed. 811, the bankrupt made a preliminary objection, not made in the court below, viz., that the District Judge had no jurisdiction to refer the petition of the trustee to a special commissioner for a report, and then to dispose of it as a court of first instance, instead of upon a petition to review an order made by him as referee, and the court said after referring to this section and general order 12: "The proper practice would therefore have been for the trustee to have applied for the turn-over order to the referee, and, after his finding, to review it, if so advised, by filing with him a petition for review by the District Judge, as

provided by General Order 27 (89 Fed. xi, 32 C. C. A. xxvii)."

The referee has no jurisdiction in a summary proceeding to require a purchaser in possession of real property from the bankrupt to turn such property over to the trustee. Nor is the power to thus act affected by the fact that because of the small worth of the equity, the trustee cannot afford to institute a plenary suit for its recovery. *In re McCracken*, (S. D. Cal. 1916) 234 Fed. 776.

Determination of validity of bonds issued by bankrupt.—In the case of *In re Valecia Condensed Milk Co.*, (W. D. Wis. 1916) 233 Fed. 173, it was held that a referee had power to pass on the validity of bonds issued by a bankrupt corporation.

Costs—Authority to tax.—The taxing of costs has been held to be within the discretion of the referee. *In re Reeves*, (N. D. N. Y. 1915) 227 Fed. 711.

1912 Supp., p. 663, sec. 38a (5).

Expenses of examination and stenographer.—See *In re Pearce*, (D. C. Mass. 1916) 235 Fed. 917.

1912 Supp., p. 664, sec. 39a (3).

Furnishing copies of testimony.—For a case wherein it was held that the bankrupt was entitled to a copy of the transcript of witnesses' testimony, see *In re Greenbaum*, (E. D. Mich. 1917) 243 Fed. 965.

1912 Supp., p. 664, sec. 39a (4).

Notice to creditors.—"The mere fact that a creditor denies that he received notice or had knowledge of the bankruptcy proceedings in time to prove his claim, is not conclusive that the statutory notice was not given or that he had no actual knowledge of the pendency of such bankruptcy proceedings, in face of a record of the District Court that such notice was given." *Clafin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

1912 Supp., p. 666, sec. 40a.

Referee entitled to commissions on moneys which should have been paid through trustee where creditors who have agreed to a composition under which they are to receive a certain per cent in cash subsequently enter into an agreement by which a less amount in cash and the balance in notes were to be accepted, it has been held that the referee is entitled to a commission as though the amount first agreed on had been deposited with the court. *In re H. Batterman & Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 699, 145 C. C. A. 585.

Commission on moneys expended by the trustee in carrying on the business of the bankrupt will not be allowed to a referee.

In re Bacon, (W. D. Ky. 1915) 224 Fed. 76.

Commission on rent.—The referee is not entitled to a commission on the amount paid for rent of premises occupied by the trustee in carrying on the business of the bankrupt although it has been held proper to allow a commission on rent paid prior thereto. *In re* J. Bacon, (W. D. Ky. 1915) 224 Fed. 764; *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Compensation proportionate to the difficulties encountered in administering the estate is not authorized by law. *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 138 C. C. A. 63.

Extra compensation.—To the same effect as the original annotation, see *In re* Langford, (S. D. Cal. 1915) 225 Fed. 311.

Statute covers all commissions and disbursements.—"The only authority for the payment of commissions to referees and trustees is found in the bankruptcy law, . . ." *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 138 C. C. A. 63.

Computation—Composition agreement.—In *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504, it was said in this connection "we think the meaning of the term 'amount to be paid to creditors,' on which the commission of one-half of 1 per cent. is to be computed, means the amount which creditors are to receive by virtue of the composition agreement. The amount offered by the bankrupt and accepted by the creditors became, upon confirmation, 'the amount to be paid creditors.' This construction not only seems logically to result from the consideration to which we have already referred, but receives additional confirmation when consideration is given to the difference between the language 'on all moneys disbursed to creditors by the trustee' (on which the 1 per cent. commission is to be computed in the case of a fully administered estate) and the 'amount to be paid to creditors,' on which one-half of 1 per cent. is to be paid in case of composition—not requiring complete administration." See also *In re* White, (S. D. Ga. 1915) 225 Fed. 796; *In re* Mills Tea, etc., Co., (D. C. Mass. 1916) 235 Fed. 815.

Review of referee's fees.—Where a motion was made, having for its object to secure a revision of the referee's statement of his own fees in a composition case, it was held that the objection should have been raised by review proceedings on the referee's report but that the suggestion having been made to the court that its officer has charged fees on an erroneous basis, the matter ought not, in view of the previous uncertainty as to the proper practice, to be dismissed without examination because informally presented. *In*

re Mills Tea, etc., Co., (D. C. Mass. 1916) 235 Fed. 815.

1912 Supp., p. 668, sec. 40b.

Apportionment of commissions.—Where a portion only of the money to be paid under a compromise agreement was deposited owing to a waiver by a part of the creditors, which money was disbursed by the referee to whom the case was transferred it was said: "As to the apportionment between the referee and his successor: It follows from what we have said that the fact that the successor referee made the disbursement of the moneys actually deposited by the bankrupt did not entitle the successor to the full amount of the commission thereon. We are asked by petitioner to apportion on this review the entire commissions allowed between the two referees. How completely the successor has intended to disclaim the right to participate in further commission, if allowed, is not entirely clear. As we are not considering the case on appeal, but merely upon revision in matters of law, we cannot on this review make or direct such complete apportionment. We assume that the District Judge will determine the apportionment under section 40b of the act, taking into account the proportionate labor and service performed by the two referees in the administration of the estate, in case the successor claims any interest in the further commission." *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

1912 Supp., p. 668, sec. 41a (1).

Contempt dependent on ability to comply with order.—Where the bankrupt is without means in his possession or control to pay over money to the trustee in accordance with an order of the referee the court cannot punish by summary imprisonment for contempt even though he may have committed an offense under section 29b of this act. *In re* McNaught, (D. C. Mass. 1903) 225 Fed. 511.

The law is well settled that inability to comply with an order requiring the payment of money, resulting from poverty, insolvency, or other cause not attributable to the fault of the party charged, will under ordinary circumstances be received as a valid excuse from the consequences of contempt. *In re* Sobol, (C. C. A. 2d Cir. 1917) 242 Fed. 488, 155 C. C. A. 263.

Failure to turn over assets.—The failure of the bankrupt to prove that he was unable to make a payment ordered by the referee and his failure to make surrender of such assets is a civil contempt of court, for which an attachment may issue committing him to the penitentiary, to be there imprisoned only unless or until he complies with the order of the bankruptcy

court. *In re Stanny*, (W. D. N. Y. 1915) 226 Fed. 517.

The fact that a bankrupt has been sentenced for concealing assets and has served out his term is no defense in a proceeding to punish him for contempt with an order to turn over the assets he concealed. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

1912 Supp., p. 673, sec. 41a (4).

Contempt by witnesses — Elements of offense.—"It is obvious that a refusal 'to be examined according to law' means a refusal in fact and effect. The form of the refusal, or in what way manifested, is of no importance. A formal refusal by a witness to answer questions, displayed by a flat and defiant declaration that he would not answer, is one form. Standing mute is another. Evasive, inconclusive, or irresponsible replies to clear and plain inquiries is another. Palpably and flagrantly untruthful answers is still another. *In re Gitkin*, (D. C.) 164 Fed. 73. There is, it must be observed, in all of these instances, the element of contumaciousness; something of the element of defiance; something which can be distinguished from mere lack of candor or frankness, or from untruthfulness, or even from plain perjury. Refusing to testify is one thing. Testifying falsely is another thing. Although equally reprehensible and open to condemnation, they are distinct and separate, and the distinction should be kept in mind, or confusion will result in visiting upon the offender the deserved punishment. The line of demarcation is distinct enough, but cannot be as readily drawn. This can be best left to the discriminating judgment of the referee before whom the bankrupt appears, and such judgment should not lightly be disturbed." *In re Blitz*, (E. D. Pa. 1916) 232 Fed. 276.

Purging oneself of contempt.—"A commitment for contempt should be preceded with certain formalities. The witness would ordinarily be permitted to purge himself by showing a willingness to recant and to testify fully. He should therefore be first admonished. This should be followed with a specific question, and an answer required. The real attitude of the witness will be then disclosed, and any further proceeding be clear-cut and definite." *In re Blitz*, (E. D. Pa. 1916) 232 Fed. 276.

1912 Supp., p. 674, sec. 41b.

Hearing.—This provision clearly requires a hearing as to the facts, and by necessary implication excludes any inference that in such case the alleged contemnor is to be purged merely by denial upon oath. *In re Boyd*, (E. D. Tenn. 1915) 228 Fed. 1005.

The punishment of contempts is within the trial court's sound discretion. *In re*

Sobol, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

1912 Supp., p. 677, sec. 44a.

Authority of referee.—The conduct of the elections of trustees is part of the administrative work which is left largely with the referees. Their decisions in reference thereto will not be set aside, unless an unjust and injurious abuse of discretion, or a clear mistake of law, is shown. *In re Grat*, (D. C. Mass. 1915) 228 Fed. 925.

"An appointment once made shall not be lightly set aside on appeal. Rights of creditors in the selection of a trustee are important, but the decision as to them ought to rest largely with the referee." *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

Appointment by creditors — Prompt action essential.—It is essential to the proper administration of a bankrupt estate that a trustee shall be appointed as promptly as possible. *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

Postponing election.—Where the stated time for an election has arrived and a majority in number of the creditors are ready and oppose delay it is the duty of the objecting creditors to be ready or to present a good excuse for not doing so and where no such excuse is offered it is not an abuse of discretion on the part of the referee to refuse to postpone the election. *In re Grat*, (D. C. Mass. 1915) 228 Fed. 925.

Action of a creditor to control the election of a trustee is not objectionable so long as his efforts are directed to the welfare of the entire unsecured creditors. *Bollman v. Tobin*, (C. C. A. 8th Cir. 1917) 239 Fed. 469, 152 C. C. A. 347.

Right of relative of bankrupt to vote for trustees.—"There is no reason in law or in morals why a relative of the bankrupt, who is a legitimate creditor, shall not have the same right to vote for a trustee as any other creditor." *In re Rothleder*, (S. D. N. Y. 1916) 232 Fed. 398. Compare *In re Ballantine*, (N. D. N. Y. 1916) 232 Fed. 271, wherein the court, on an application to review the referee's decision refusing to allow the wife of the bankrupt to vote and rejecting her claim, said that the wife should in no event be permitted to dominate the choice of the trustee.

Right of attorney to vote for trustee.—Attorneys who appear for a creditor and desire to vote for a trustee should have specific written authority, even though the law itself does not expressly require this. *In re Capital Trading Co.*, (N. D. N. Y. 1916) 229 Fed. 806.

Improper or irregular vote for trustee.—"The election of a trustee will be disapproved where that result has been ob-

tained through the active efforts of the bankrupt, the question is always one of good faith, and the inquiry must be as to whether anything has been done by the bankrupt which will disqualify, or tend to disqualify, a trustee from acting in that impartial and vigorous manner which will assure the proper results for the creditors." *In re Rothleder*, (S. D. N. Y. 1918) 232 Fed. 398.

Selection in interest of bankrupt.—"If creditors knowingly join with the bankrupt or his attorney, or with an assignee or his attorney, in an effort to do what it has repeatedly been decided they may not do, the simplest and most obvious way to defeat their purpose is to reject their selection of trustee, and permit the creditors who are not in the combination to make the selection." *In re Stowe*, (N. D. Cal. 1916) 235 Fed. 463.

Creditor's appointment subject to approval.—While the appointment is subject to approval or disapproval by the referee, he cannot act arbitrarily, but only for cause. *Wilson v. Continental Bldg., etc., Assoc.*, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18, *affirming* (N. D. Cal. 1915) 232 Fed. 413.

Review by judge.—It is said to be a settled practice not to disturb the acts of referees in administrative matters, as for instance the election of a trustee, unless a plain and injurious error of law or abuse of discretion is shown. *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

The power of the court as to refusing approval of trustees will not be so exercised as to deprive creditors acting in good faith from controlling the election of trustees. *In re Archbold*, (N. D. Cal. 1916) 237 Fed. 408.

Where the inquiry is whether the referee and the District Court had before them substantial evidence that the relations between the bankrupt and the person appointed as trustee were such as to justify the referee in disapproving of the appointment or whether the selection was accomplished through the efforts of the officers and attorneys of the bankrupt, if there is substantial evidence upon either of these points, this court will not interfere upon a petition to revise. *Wilson v. Continental Bldg., etc., Assoc.*, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18, *affirming* (N. D. Cal. 1915) 232 Fed. 413.

1912 Supp., p. 680, sec. 45a (1).

Unsuccessful candidate.—Where there is no election of a trustee, owing to a lack of the requisite votes, the referee may select one of the unsuccessful candidates. *In re F. & D. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 69, 155 C. C. A. 13, *reversing* (S. D. N. Y. 1916) 237 Fed. 895.

1912 Supp., p. 681, sec. 46a.

Ground for removal.—Where the trustee not only failed to carry out the wishes of the creditors by whom he was chosen but placed himself in direct antagonism to them, it was held that such conduct justified his removal. *Bollman v. Tobin*, (C. C. A. 8th Cir. 1917) 239 Fed. 469, 152 C. C. A. 347.

1912 Supp., p. 682, sec. 47a (2).

Purpose and effect of amendment of 1910.—The amendment of 1910 to this section did not confer new means of collecting ordinary claims due the bankrupt. *Kelley v. Gill*, (1917) 245 U. S. 116, 38 S. Ct. 38, 62 U. S. (L. ed.) —.

"The effect of this amendment was to give to the trustee, as to all property coming into the custody of the bankruptcy court, the rights of a creditor holding a lien." *In re Fitz-hugh Hall Amusement Co.*, (W. D. N. Y. 1915) 228 Fed. 169.

Since 1910 a trustee has two rights as to the property in his custody, that is that of a bankrupt and of a creditor with a lien. These rights are different and sometimes antagonistic in which case the trustee can take his choice. *In re Seward Dredging Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 225, 155 C. C. A. 65.

Rights of trustee.—"This act has been held to confer upon the trustee the rights which the bankrupt or any of his creditors possessed or might lawfully possess at the time of the filing of the petition." *Mergenthaler Linotype Co. v. Hull*, (C. C. A. 1st Cir. 1916) 239 Fed. 26, 152 C. C. A. 76.

Trustee has rights, remedies and powers of a judgment creditor holding an execution returned unsatisfied. *Bell v. Shaw*, (C. C. A. 8th Cir. 1916) 230 Fed. 976, 145 C. C. A. 170; *In re Hawley Down-Draft Furnace Co.*, (E. D. Pa. 1916) 233 Fed. 451; *Bunch v. Maloney*, (C. C. A. 8th Cir. 1916) 233 Fed. 967, 147 C. C. A. 641; *In re Ricketts*, (C. C. A. 7th Cir. 1916) 234 Fed. 285, 148 C. C. A. 187; *In re Reynolds*, (N. D. N. Y. 1917) 243 Fed. 268; *In re Zeis*, (C. C. A. 2d Cir. 1917) 245 Fed. 737, 158 C. C. A. 139.

State law.—As the rights of a creditor "holding a lien by legal or equitable proceedings" are essentially a matter of state law, it follows that the trustee's rights are the same. *In re Floyd-Scott Co.*, (D. C. Mass. 1915) 224 Fed. 987.

Status of trustee.—While the Bankruptcy Act imposes upon the trustee the duty of conserving the estate, collecting outstanding claims, and resisting payment of doubtful claims, he stands in a fiduciary capacity, and is to some extent a stakeholder. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878.

A trustee appointed in subsequently instituted bankruptcy proceedings does not

acquire the status of a creditor holding a lien superior to that of a mortgage executed more than four months before the petition in bankruptcy was filed but recorded within that period. *Martin v. Commercial Nat. Bank*, (C. C. A. 5th Cir. 1916) 228 Fed. 651, 143 C. C. A. 173.

"Creditor."—"When speaking of a 'creditor,' Congress means a creditor of the bankrupt; it is impossible that any trustee could exercise the power or right of any creditor of any person, who (e. g.) might lawfully establish a lien upon property fortuitously coming into the court's custody." *In re Seward Dredging Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 225, 155 C. C. A. 65.

Collection and reduction of assets.—"It is the imperative duty of the trustee of a bankrupt estate to exercise all due diligence to gather in the assets of the estate, and it would seem clear that an examination of the schedule and a following up of all leads naturally suggested thereby would be the first step to be taken. In the absence of some explanation for a failure so to act, the trustee must be charged with negligence and must respond for the consequences thereof." *In re Kuhn*, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

"The trustee cannot be excused from the performance of the duties for which it receives compensation because its beneficiaries, the creditors, have the same avenues of information open to them and fail to take advantage thereof. The creditors may, but are under no duty to, investigate and search for assets, or to suggest to the trustee possible sources of information, which the latter has at least the same opportunity of knowing." *In re Kuhn Bros.*, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

Trustee's right to collect assets—Right to possession.—"Where it appears by a fair preponderance of the testimony that the bankrupt has assets in his possession which he has not turned over to the trustee a decree may be entered directing the bankrupt to turn it over." *In re Dixon*, (D. C. Mass. 1915) 224 Fed. 624.

Property encumbered by liens.—"When a trustee finds that the bankrupt owns property subject to liens, he should present a petition to the court asking for instructions as to the course which he should pursue." *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

Unrecorded chattel mortgage.—"The title of the chattel mortgage of a bankrupt corporation cannot be perfected as against the trustee in bankruptcy, who asserts the invalidity of the mortgage as against him because not properly acknowledged and recorded, by taking possession of the chattel under the mortgage after the filing of the petition in bankruptcy and before the

adjudication. *Fairbanks Steam Shovel Co. v. Wills*, (1916) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Unrecorded conditional sale.—"The adjudication in bankruptcy creates a lien in favor of the trustee upon all property in the custody, or coming into the custody, of the bankruptcy court. The status of the general creditors by such act is changed, and by operation of law a lien is created and established in favor of the trustee for the general creditors, and supercedes any rights theretofore existing in favor of a conditional sale, a memorandum of which was not recorded pursuant to a state law. *In re Pacific Electric, etc., Co.*, (W. D. Wash. 1915) 224 Fed. 220.

"The decisions since the adoption of this statute hold that where the seller of property by conditional sale has failed to record his contract of sale where the state statute renders the contract invalid as to lien creditors or bona fide purchasers without registration, he has no remedy as against the trustee in bankruptcy to enforce the lien, but is a mere general creditor, with a right to share in the assets of the estate." *Hinton v. Williams*, (1915) 170 N. C. 115, 86 S. E. 994.

But where the failure to file a conditional contract of sale does not under a state law make the contract void as to all creditors but only as against subsequent purchasers, pledgees and mortgagees in good faith, it is valid as to the trustee he not being clothed with the rights of a subsequent purchaser. *In re I. S. Remsen Mfg. Co.*, (E. D. N. Y. 1915) 227 Fed. 207.

A deed of trust or assignment of property, subject to mortgages, which directs a sale thereof and from the proceeds the payment of the mortgages in the order of their priority, and the balance to the general creditors, if made within four months of the filing of a petition in bankruptcy, is avoided by the adjudication and the property passes to the trustee. *In re Cutler*, (S. D. N. C. 1916) 228 Fed. 771.

Unrecorded transfer.—Trustees have the rights and remedies of a lien creditor or a judgment creditor as against an unrecorded transfer. *Fairbanks Steam Shovel Co. v. Wills*, (1915) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Property accidentally in possession of bankrupt.—A creditor holding an unsatisfied judgment cannot attack the property of a third person accidentally in the possession of a bankrupt and therefore trustees cannot take title to such property. *Brown Bros. Co. v. Smith Bros. Co.*, (E. D. La. 1916) 231 Fed. 475.

Recovery of preferences.—The trustee in bankruptcy has no more extensive and no better title or right in property than did the bankrupt himself, except he may set aside transfers of property made by

the bankrupt in fraud of his creditors and recover preferences. *In re Place*, (N. D. N. Y. 1915) 224 Fed. 778.

Recovery of concealed property from bankrupt.—Where it appears that property was in a person's hands, and that fabricated evidence has been given by that person concerning the alleged items of payment or discharge, the natural inference is that falsehood has been resorted to, because no true and correct items of discharge exist; i. e., that the property is still in the possession of the person into whose hands it was traced. *In re Dixon*, (D. C. Mass. 1915) 224 Fed. 624.

"The law is well settled that 'recent' possession of property by the bankrupt, accompanied by a failure to account for it, justifies an inference that the property is still in the bankrupt's possession." *In re Dixon*, (D. C. Mass. 1915) 224 Fed. 624.

Burden of proof.—"While the burden of proof is primarily on the trustee to show that the bankrupt has not accounted for all his assets, yet, when it is established . . . that the bankrupt had possession of the unscheduled assets very recently before the bankruptcy proceedings were instituted, a presumption arises that he still had them when such event took place, and the burden is shifted to the bankrupt to show why they were not scheduled and turned over. *In re Ricciardelli*, (D. C. N. J. 1915) 224 Fed. 638.

Trust funds.—A trustee being vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied, a motion made by him, within the time allowed by law for the filing of claims against the bankrupt's estate, for an order directing that an execution issue under section 1391 of the New York Code of Civil Procedure against the income from certain trust funds for the benefit of the bankrupt and directing the testamentary trustee to pay over, etc., will be granted. *Matter of Poikanzer*, (1917) 101 Misc. 100, 166 N. Y. S. 811.

Liens—Validity.—Under this section the trustee has the right to attack the validity of a lien. *In re Shute*, (W. D. Wash. 1916) 233 Fed. 544.

Prior recorded lien.—A lien created prior to, and recorded within, the four months' period, is good as against the statutory lien of the trustee given by this section. *In re Brown Wagon Co.*, (S. D. Ga. 1915) 224 Fed. 266.

Void mortgage.—A mortgage by the bankrupt which is void as to a creditor, who had fixed a lien on the property in controversy the day the petition in bankruptcy was filed, is void as to the trustee. *Park v. South Bend Chilled Plow Co.*, (Tex. Civ. App. 1918) 199 S. W. 843.

Mortgage void as to creditors under state law.—Where under state laws a mortgage, defective both in its execution and recordation, is by reason thereof void as to creditors subsequently dealing with the mortgagor without notice, it is held to be void as to the trustee in whom title rests. *Davis v. Harlow*, (1917) 130 Md. 165, 100 Atl. 102. See also as to where mortgage not recorded, *In re T. H. Bunch Commission Co.*, (E. D. Ark. 1915) 225 Fed. 243; *In re Cooper's Estate*, (S. D. Ia. 1915) 226 Fed. 317; *In re Kruse*, (N. D. Ia. 1916) 234 Fed. 470; *In re Empress Pharmacy Co.*, (S. D. Ia. 1916) 237 Fed. 676; *In re Rosenthal*, (S. D. Ga. 1916) 238 Fed. 597.

Prior recorded chattel mortgage.—The lien of a chattel mortgage executed prior to and recorded within the four months' period is superior to any lien created by this provision in the trustee. *In re Virgin*, (S. C. Ga. 1915) 224 Fed. 128. See also *In re Bolstad*, (W. D. Wash. 1915) 224 Fed. 283.

Landlord's lien.—Where the lien of a landlord is inchoate and covers no special property he is not entitled to priority over the lien given to the trustee under this provision. *Southern R. Co. v. Wilder*, (C. C. A. 5th Cir. 1916) 231 Fed. 933, 146 C. C. A. 129.

Mechanic's lien.—A contractor's trustee in bankruptcy takes his titles subject to liens filed by laborers, mechanics, materialmen or subcontractors subsequent to the assignment but within the time prescribed by a state statute. *Gates & Co. v. John F. Stevens Constr. Co.*, (1917) 220 N. Y. 38, 115 N. E. 22.

"Valid liens created by mortgages made by the bankrupt before the institution of the bankruptcy proceeding are not subordinated to the rights of his trustee in bankruptcy, which vest as of the date of the filing of the petition in bankruptcy." *Border Nat. Bank v. Coupland*, (C. C. A. 5th Cir. 1917) 240 Fed. 355, 153 C. C. A. 281.

Secret and unrecorded liens.—The amendment of the Bankruptcy Law was not intended to enlarge the rights of a trustee as against lienors under a state statute, but to enable the trustee to avoid secret and unrecorded liens created by act of the bankrupt. *Gates v. John F. Stevens Constr. Co.*, (1917) 220 N. Y. 38, 115 N. E. 22.

1912 Supp., p. 685, sec. 47a (3).

This provision is mandatory.—*In re Dayton Coal Co.*, (E. D. Tenn. 1916) 239 Fed. 737.

A bank was not charged with notice that funds belonged to a bankrupt estate merely from the fact that certain of the checks deposited by the trustee were countersigned by the clerk of the court,

pursuant to the provisions of rule 29 and section 47 of the Bankruptcy Act. *Fidelity, etc., Co. v. Queens County Trust Co.*, (1916) 174 App. Div. 160, 159 N. Y. S. 954.

1912 Supp., p. 686, sec. 47a (11).

Setting aside exemptions.—*Exemption should be set aside promptly.*—One of the first concerns of the trustee should always be promptly to set aside to the bankrupt any exempt property. If the real estate in which the homestead is claimed be indivisible, steps should be taken to have it sold. These things should always be promptly attended to by a trustee, and the referee should see that it is done. *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

The trustee cannot arbitrarily refuse to set aside property to which the bankrupt is clearly entitled by law; but he represents all of the creditors, and is vested with some discretion. *In re Bonvillain*, (E. D. La. 1916) 232 Fed. 370.

Trustee's action not final.—The bankrupt's exemption when set apart by the trustee is inchoate and not fully fixed in him until approved by the referee in bankruptcy. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

Exceptions to exemptions.—General Order XVII is mandatory as to the time of filing exceptions to the exemptions set apart and the District Court has no discretion to extend the time. *In re Krecun*, (C. C. A. 7th Cir. 1916) 229 Fed. 711, 144 C. C. A. 121.

1912 Supp., p. 689, sec. 48a.

Trustee's compensation.—The courts are controlled by the provisions of this Act in fixing the referee's compensation. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 445, 145 C. C. A. 439.

There is no law authorizing compensation to a referee and a trustee proportionate to the difficulties encountered in administering an estate. *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 333.

Congress did not intend by the 1910 Amendment to permit trustees to charge a compensation for performing acts outside their duties as such. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Making sale of mortgaged property.—Commissions and expenses of a trustee in making a sale of mortgaged property have been denied where it was apparent from the first that there would be no balance over the lien for the benefit of the general estate. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Surcharge against trustee's commissions.—A trustee on his accounting will

be surcharged against his commissions with the expense of controversies which arises through his fault. *In re Eden Musee American Co.*, (S. D. N. Y. 1916) 230 Fed. 925.

Counsel fees.—Reasonable counsel fees are allowable as a proper expense in connection with a sale by the trustee. *In re West*, (N. D. Pa. 1916) 232 Fed. 903.

The trustee is not entitled to take credit for counsel fees for services unconnected with the sale of property. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

Effect of amendment of 1910.—The amendment of 1910 was intended to furnish an enlarged basis for the computation of the trustee's commissions, but was not intended to affect the source of payment, so as to displace liens in violation of the provisions of section 67d, as amended and re-enacted in 1910. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

1912 Supp., p. 690, sec. 48d.

[Compensation of receivers and marshals appointed under section 2 (3).]

Receiver's fees.—The total compensation to receivers is not to be increased by the fact that there is more than one receiver. *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 813.

A receiver's duties are limited by the powers given him in the order of appointment. He cannot exceed the powers of the appointment, and expect compensation for any activities not authorized. *In re Metropolitan Motor Car Co.*, (W. D. Wash. 1915) 225 Fed. 274.

Where it is necessary for the preservation of the property that a receiver should be appointed to take charge of it before the selection of a trustee, it has been held that expenses necessitated by such receivership, including compensation to the receiver, should be allowed. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Orders for allowances to receivers are purely administrative, subject to entire disallowance or change by either increase or decrease with the development of the administration. *Hume v. Myers*, (C. C. A. 4th Cir. 1917) 242 Fed. 827, 155 C. C. A. 415.

Discretion of court.—"The receivers are entitled to a reasonable compensation for the services they have performed. The court which appointed them has the right to determine what that reasonable compensation is. In doing so it must exercise its discretion. But while the matter is left to its discretion, it is not at liberty to fix the allowance at more

than a fair and reasonable amount." Appellate courts are not, however, much inclined to interfere with the exercise of this discretionary power. *Eames v. H. B. Claffin Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 693, 145 O. C. A. 579.

"The compensation specified in the statute is clearly intended not as a fixed, invariable amount to be awarded in all cases, but as a maximum to be allowed only in cases justifying it. As a practical matter, in the great majority of cases the maximum compensation is so small that it is not even fair compensation for the work done; but in each case the question, nevertheless, is how much the services of the receivers were fairly worth." *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 813.

Receiver appointed by state court.—Compensation may be allowed by a bankruptcy court to a receiver appointed by a state court for services which were of value to the estate in preserving and collecting it. *State v. Angle*, (C. C. A. 8th Cir. 1916) 236 Fed. 644, 144 C. C. A. 640.

1912 Supp., p. 692, sec. 48d.

[When acting as mere custodian.]

Mere custodian.—The proviso limiting the compensation of the custodian was meant to cover cases where the services performed are merely those of a keeper. *In re Metropolitan Motor Car Co.*, (W. D. Wash. 1915) 225 Fed. 274.

1912 Supp., p. 692, sec. 48d.

[Or confirmation of composition.]

Effect of confirmation of composition on fees.—See *In re Miller*, (E. D. N. Y. 1917) 243 Fed. 242.

1912 Supp., p. 695, sec. 51a (2).

Application.—This section relates only to the statutory fees to be paid to the clerk, referee and trustee as compensation for their services, and has no reference to the expenses incurred by the officers of the court in the bankruptcy proceedings. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

1912 Supp., p. 697, sec. 55e.

The referee, if in his judgment it is advisable, may call a meeting of the creditors, to the end that they may be heard before action is taken, subjecting the estate to possible cost and expense. *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

1912 Supp., p. 699, sec. 56b.

Secured creditors.—By sections 56a and 57e of the Bankruptcy Act secured credit-

ors are permitted to participate in the bankruptcy proceedings as creditors, but only as creditors for the sum which the court finds to be due them over and above the value of the securities which they hold. *In re Reichard*, (E. D. Pa. 1916) 230 Fed. 525.

After a trustee has been chosen, a secured creditor cannot in respect to its claim vote at creditors' meetings, nor can its claim be counted at such meetings in computing either the number of creditors or the amounts of their claims unless the amounts exceed the value of such securities or priorities, and then only for the excess. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n* (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22.

While in bankruptcy proceedings a secured creditor is not entitled to vote at a creditors' meeting the fact that through the fault or inadvertence of the referee or trustee a creditor is permitted to vote at such meeting when his lien has been asserted in his claim as filed is no waiver of the lien. *Horton v. Queens County Machinery Corp.*, (1917) 101 Misc. 31, 166 N. Y. S. 662.

1912 Supp., p. 700, sec. 57a.

Necessity and manner of proving claim.—It is essential that a proof of debt in bankruptcy show on its face the true interest of the person presenting it. *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

"It has been uniformly held under the present bankruptcy law that the statement of the claim and its consideration must be sufficiently specific and full to enable the trustee and the creditors to make proper investigation as to its fairness and legality, without undue trouble or inconvenience." *In re Hudson Porcelain Co.*, (D. C. N. J. 1915) 225 Fed. 325.

The proof of claim must accord with the statutory requirements before it is accorded any probative force. *In re Hudson Porcelain Co.*, (D. C. N. J. 1915) 225 Fed. 325.

Negative averments.—Where in the sworn proof of claim for breach of a contract there are negative averments, clearly alleged, to the effect that the breach was not brought about by certain causes which would excuse it, it has been held that these allegations are prima facie evidence and in the absence of proof to the contrary sufficient proof of the claim. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486.

Where the proof of a claim for services incorporated a copy of the judgment, which showed all facts necessary to ascertain the true character of the claim, and also made a statement as to the date of the services, it was held to be sufficient in form to be acted upon and that

where neither the trustee nor other creditors seemed to have been misled or hindered by lack of information as to the precise nature of the claim, the referee did not exceed his powers in treating the proof as adequate for the purpose in hand. *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819.

Effect of failure to prove.—"In the case of a bankrupt corporation, the bankruptcy act does not restrain a creditor, who has not proved his claim in bankruptcy, from prosecuting an action to judgment, for the purpose of enforcing his lien upon the property attached, or of charging officers or stockholders who are liable for the debts of the corporation." *Chickasaw Hotel Co. v. C. B. Barker Constr. Co.*, (1916) 135 Tenn. 305, 186 S. W. 115, L. R. A. 1916F 106.

"When property is sold subject to liens, the lienholder, not having presented his claim and invoked the administration of the full value of the property, cannot afterwards resort to the bankrupt estate, but is relegated to the property as security." *In re Old Oregon Mfg. Co.*, (W. D. Wash. 1916) 236 Fed. 804.

Proof of partnership obligation.—"The better rule, sanctioned by the later cases, is that, when persons who are partners unite in making a note, though they sign their several names, instead of the partnership name, if the note is one given in a partnership transaction and the partnership receives the consideration, it should be proved and allowed as a partnership obligation in bankruptcy." *In re Kendrick*, (D. C. Vt. 1915) 226 Fed. 978.

Amendment of proofs.—See to same effect as original annotation, *Loutos v. Coppard*, (C. C. A. 5th Cir. 1917) 246 Fed. 803, — C. C. A. —; *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

After a judgment has been rendered allowing proof of an unsecured claim to be amended the claim stands as if it had been originally filed in the way it had been amended. *Britton v. Thomas*, (C. C. A. 8th Cir. 1916) 238 Fed. 125, 151 C. C. A. 201.

An amendment of proof as one of an unsecured debt has been allowed where there has been no order expunging the claim. *Seligman v. Gray*, (C. C. A. 1st Cir. 1915) 227 Fed. 417, 142 C. C. A. 1173.

Amendment to avoid statute of limitations.—A claimant may be allowed to file an amended proof of claim for this purpose. *In re Ballantine*, (N. D. N. Y. 1916) 232 Fed. 271.

Who may prove claims.—A surety or an indorser for the bankrupt, whose liability is contingent, cannot prove a claim of his own by reason of such liability. It is only the creditor's claim which is provable. *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792.

Proof by agent.—The Supreme Court has prescribed the form to be used by an

agent, and it provides for a disclosure of the principal. It is not contemplated by rules that debts be proved by an agent when the principal is present and able to file his own proof. *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

Proof by assignee.—"Assignees of claims have the right, under the provisions of the bankruptcy law, to prove them against the estate just as other claims may be proven." *In re Breakwater Co.*, (E. D. Pa. 1916) 232 Fed. 375.

The assignee of a claim proven and allowed, and upon which dividends have been paid, need not and cannot make proof of the same claim in his own name as the then owner and assignee of such claim. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

Father of minor son.—Proofs are properly made by the father for a claim for labor performed by a minor son. *In re Hadkell*, (D. C. Mass. 1915) 228 Fed. 819.

Secured creditor.—Under section 57, subsections "a" and "h," of the Bankruptcy Act, as construed by the courts, when the trustee does not elect to redeem by paying the debt, a secured creditor, having the right to sell the security, is not required, in the first instance, to so elect, but he may sell the security and file a claim for the unpaid remainder of his debt. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Effect of proving claims.—Proof of a claim does not commit the claimant to a waiver of his unquestioned right to have the affairs of the debtor administered elsewhere than in the bankruptcy court. *Tate v. Brinser*, (M. D. Pa. 1915) 226 Fed. 878.

Where creditors have only proved a partnership debt they are not entitled on that proof to share in the distribution of a bankrupt member's individual estate. *Adams v. Brown*, (C. C. A. 4th Cir. 1915) 226 Fed. 688, 141 C. C. A. 444.

The allowance of a claim against the estate of one of the members of a firm is not a determination of priorities as between firm and individual creditors. *International Agr. Corp v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

1912 Supp., p. 703, sec. 57c.

Where the claim reasonably delivered to the referee lacked the statement of the official character of the officer signing the jurat and the referee returned it to the creditor's attorney for correction in that respect and it was not redelivered to the referee for about two years it was held that the proof as originally filed was sufficient to form the foundation for a good proof by perfecting amendments and that the claim should appear on the referee's filing record to have been filed on the date

when first presented. *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819.

1912 Supp., p. 703, sec. 57d.

Allowance of claims.—*The sworn proof of claim against the bankrupt is prima facie evidence of the indebtedness claimed; and the allowance of the claim amounts to an adjudication that his estate was indebted to the creditor, so long as such adjudication is not set aside or reversed.* *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Power to allow.—The court cannot order an unsecured creditor paid in full to the exclusion of all other unsecured creditors. Thus it was so held where a creditor, the owner of letters patent, had a valid license agreement with the bankrupt to take back upon request any of the patented articles at the net price at which they were furnished and to credit them on account or pay cash therefor and in pursuance of an opportunity given by the court to repurchase the articles, refused to do so except upon condition that its unsecured account against the bankrupt should be paid in full. *L. E. Waterman Co. v. Kline*, (C. C. A. 4th Cir. 1916) 234 Fed. 891, 148 C. C. A. 489.

Effect of allowance.—The allowance of claims against the estate of a bankrupt is a finding as to all parties that the debts did exist and had not been discharged or waived. *Gleason v. Thaw*, (C. C. A. 2d Cir. 1916) 234 Fed. 570, 148 C. C. A. 336.

1912 Supp., p. 704, sec. 57e.

Allowance of secured and priority claims.—After a trustee has been chosen a secured creditor cannot in respect to its claim vote at creditors' meetings, nor can its claim be counted at such meetings in computing either the number of creditors or the amounts of their claims unless the amounts exceed the value of such securities or priorities, and then only for the excess. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22. See also *In re Reichard*, (E. D. Pa. 1916) 230 Fed. 525.

One to whom notes of a bankrupt have been pledged may be allowed to prove for the whole amount of the notes if necessary to cover its claim. *In re Anger Baking Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 181, 142 C. C. A. 537.

A claimant having a demand against two insolvent estates has a right to prove against each for the full amount, and can assert this right against one unimpaired by the fact that he holds security against the other. He can recover dividends from the two bankrupt estates upon the full amount of his claim, at the time the peti-

tion in bankruptcy was filed therein until from all sources he receives full payment of his claim, but no longer. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 906, 147 C. C. A. 580.

Mortgage bondholders under a corporation mortgage have, under this section, proper standing to petition the court to vacate an order of adjudication, on the ground that the bankrupt did not have his principal place of business, residence, or domicile within the district but had its principal place of business in another district. *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 228 Fed. 984.

1912 Supp., p. 706, sec. 57f.

Objections by trustee.—Where a trustee has been appointed, objections to claims should be made, and review proceedings, if advisable, be taken by him, or, in case he declines to act, by creditors proceeding in his name by order of the referee. The practice of recognizing individual creditors in such matters, after the appointment and qualification of the trustee, is improper and objectionable. *In re Knox Automobile Co.*, (D. C. Mass. 1915) 229 Fed. 241.

Where the bankrupt and one creditor contested a petition of three creditors on the ground that the petition of one of the creditors was not valid and provable but subsequently, and after a partial hearing, the adjudication was expressly consented to and the order of adjudication was entered it was held that this adjudication could not estop the trustee acting on behalf of all creditors or any noncontesting creditors from denying the validity and provability of such claim. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

1912 Supp., p. 706, sec. 57g.

Surrender essential.—A creditor who has received a preference which is voidable must surrender the same before his claim will be allowed. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255.

So where it appears that a creditor has received a preference within the four months prior to bankruptcy proceedings the referee has power to order the claim disallowed unless the claimant surrender such preference to the trustee in accordance with the provisions of this section. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 228 Fed. 309.

A preferred creditor may prove his claim under this section, notwithstanding there has been no surrender of his preference by him beyond what is involved in the payment of a final judgment secured against him in a proceeding instituted by the trustee to avoid the preference. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

A right asserted by a mortgagee under a chattel mortgage to the proceeds of the sale of the mortgaged property is not such a claim as, under this section, will be disallowed until the surrender of an illegal preference obtained. Even were it considered as an ordinary claim, not arising out of an entirely separate transaction, the greater weight of authority is against its disallowance. *In re Johnson*, (W. D. Wash. 1915) 224 Fed. 180.

Compulsory surrender.—The fact that a claimant has retained a voidable preference, until he has been compelled to surrender the same by legal proceedings, does not affect the provability or allowance of his debt after such surrender has been made. *In re Louis J. Bergdoll Motor Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 410, 147 C. C. A. 346.

So a creditor may prove his claim as a general creditor after compliance with a decree directing him to return a voidable preference. *State Bank v. Ingram*, (C. C. A. 8th Cir. 1916) 237 Fed. 76, 150 C. C. A. 278.

1912 Supp., p. 709, sec. 57h.

The word "litigation," as used in this section, is a comprehensive term, meaning any appropriate action or proceeding in the courts to ascertain the value of the security, wherein the secured creditor and trustee may each be heard, and includes foreclosure proceedings. *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

Right generally of secured creditor.—Under section 57, subsections "a" and "h," of the Bankruptcy Act, as construed by the courts, when the trustee does not elect to redeem by paying the debt, a secured creditor, having the right to sell the security, is not required, in the first instance, to so elect, but he may sell the security and file a claim for the unpaid remainder of his debt. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Allowance for balance only.—A creditor who has realized on collateral can only prove for the amount of the debt after deduction of the amount received for the collateral. *In re Bash*, (E. D. Pa. 1917) 245 Fed. 808.

When the creditor lawfully converts the securities into money, the amount realized should determine the amount to be charged against the face of the claim. *In re Isaacs*, (C. C. A. 2d Cir. 1917) 246 Fed. 820.

The fact that a trustee knew of and acquiesced in a foreclosure suit has been held not to vary the original agreement between the mortgagor and mortgagee and, if construed as an agreement as to method of liquidation, to be without validity for lack of the court's direction as provided in this section. *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

Burden of proof.—Where the proof of claims shows that claimant on a sale of the property mortgaged as security for its debt bought in the property, the burden is on it to show that such property was of insufficient value to pay its debts. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

1912 Supp., p. 710, sec. 57i.

Proof by surety.—In ordinary instances, no question of waiver of rights intervening, subsection "i" of section 57 is conclusive of the authority of a surety to prove the claim of the creditor whose debt he paid. *Kilpatrick v. U. S. Fidelity, etc., Co.*, (C. C. A. 5th Cir. 1916) 228 Fed. 587, 143 C. C. A. 109.

Where a surety has paid the amount of its obligation into court, which sum has been divided among the creditors, it is entitled to subrogation and steps into the creditor's shoes with the right to prove its claim and a claimant who has received such a dividend must credit the sum so received and confine itself to the balance. *In re American Product Co.*, (C. C. A. 3d Cir. 1915) 224 Fed. 401, 140 C. C. A. 87.

Subrogation of indorser.—Upon payment of a note by the indorsers they become subrogated to the position of the creditor. *In re Griffith Stillings Press*, (D. C. Mass. 1917) 244 Fed. 315.

1912 Supp., p. 711, sec. 57k.

Reconsideration allowable.—Under this section and General Order XXI, a claim which has been allowed may be reconsidered and rejected on the petition of a creditor. *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

Under this provision it is competent for the referee, proper notice being given to all persons in interest, to reconsider his action in allowing a claim and to realow it or deal with it according to the equities of the case. *Cary v. International Agricultural Corp.*, (N. D. Ohio 1916) 243 Fed. 475; *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

1912 Supp., p. 712, sec. 57n.

Construction and application.—This section has reference only to the proving of claims against the bankrupt's estate. It does not apply to an offer of composition.

In re Atlantic Constr. Co., (S. D. N. Y. 1915) 228 Fed. 571. See also *In re Aarous*, (D. C. N. J. 1917) 243 Fed. 634; *In re Breakwater Co.*, (E. D. Pa. 1916) 232 Fed. 375.

Time for proving claims—One year limitation.—Claims must be proved within one year after the date of adjudication. *In re Trion Mfg. Co.*, (N. D. Ga. 1915) 224 Fed. 521.

And the period prescribed by this section is not enlarged or started anew by the discovery of unscheduled assets. *Chapman v. Whitsett*, (C. C. A. 8th Cir. 1916) 236 Fed. 873, 150 C. C. A. 135.

The limitation prescribed by this section is, with some exceptions, definite and conclusive. *Chapman v. Whitsett*, (C. C. A. 8th Cir. 1916) 236 Fed. 873, 150 C. C. A. 135.

It was not intended to apply to any claim against the estate for something arising after the proceedings were instituted as part of the cost of administration as for instance a claim for rental of the premises occupied by the trustee. *In re Green*, (E. D. Pa. 1916) 231 Fed. 253.

Time of proving claims "liquidated by litigation"—The phrase "liquidated by litigation."—A preferred creditor is not barred by the one year statute of limitation, but his claim is within the protection of the proviso in section 57n as a claim "liquidated by litigation." *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

A proceeding to recover a preference is within the phrase "liquidation by litigation." *In re Louis J. Bergdoll Motor Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 410, 147 C. C. A. 346.

Amendment after one year period.—Much liberality has been shown by the courts in permitting imperfect claims and proofs of claim to be put into proper form after the statutory period has expired, but there seems to be no decision that runs counter to the positive language of the Act and permits a claim that is wholly new to be presented after the limitation has run. In some form the substance of a claim must have been made within the proper time, but if this has been done amendments may be made afterward. *In re Thompson*, (C. C. A. 3d Cir. 1915) 227 Fed. 981, 142 C. C. A. 439.

In the case of *In re Amsdell-Kirschner Brewing Co.*, (N. D. N. Y. 1917) 243 Fed. 783, the court denied an application to amend after the expiration of the one year period and an affirmation of the order of the referee disallowing the claim on the ground that it would be a waste of time to allow the amendment to the claim, and expend time and money in taking proofs in regard thereto, as the trustee in bankruptcy contested the same most strenuously.

1912 Supp., p. 716, sec. 58a (5).

Effect of notice.—An order of the bankruptcy court declaring a dividend and adjudicating the claim of a bank to priority in a fund collected from insurance companies on policies held by the bank as collateral, has been held to be binding upon indorsers who were parties to the settlement with the insurance companies and who had notice of the intention to declare the dividend, and consented to the payment of the policies to the trustee while parties to the bankruptcy proceedings, although they voluntarily withdrew their claim in the bankruptcy proceeding prior to the declaration of the dividend; in view of their relation to the whole transaction. *American Sav. Bank, etc., Co. v. Munson*, (1916) 93 Wash. 78, 159 Pac. 1195.

Where a claim has been properly disallowed the claimant has no standing to object to a dividend order made without giving the required ten days' notice. *In re Leslie, etc., Co.*, (D. C. Mass. 1916) 230 Fed. 465.

1912 Supp., p. 716, sec. 58a (8).

Sections 58a and 59g when used together relate only to dismissals upon application of a party in interest, and do not apply to the dismissal of a voluntary petition, upon the initiation of the court, and for the protection of its officers from the continuance of merely futile proceedings, on account of the bankrupt's own failure to take the preliminary steps necessary to bring the creditors before the court. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

1912 Supp., p. 717, sec. 59a.

A voluntary petition for adjudication of a corporation as a bankrupt may be filed by authority of the board of directors. *In re S.*, etc., Mfg. Co., (N. D. Ohio 1917) 246 Fed. 1005; *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155; *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016; *Rudebeck v. Sanderson*, (C. C. A. 9th Cir. 1915) 227 Fed. 575, 142 C. C. A. 207.

In the case of a voluntary petition authorized by the directors of a corporation it is the duty of objecting stockholders to move against it promptly if at all. *Rudebeck v. Sanderson*, (C. C. A. 9th Cir. 1915) 227 Fed. 575, 142 C. C. A. 207.

"The solvency vel non of the corporation is not material in a voluntary petition." *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016.

Effect of previous involuntary petition.—See to same effect as original annotation, *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619. See also *In re Continental Coal Corp.*, (C. C.

A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

Averments of petition.—Where an adjudication is desired of the petitioning partners as individuals as well as the firm, there should at least be inserted in the prayer of the petition a request for an adjudication of the petitioning partners as well as of the firm. *In re Lenoir*, (E. D. Tenn. 1915) 226 Fed. 227.

Where the averments of the petition clearly show commercial insolvency the court has authority under this section to act on the petition as soon as it is filed and to make the adjudication. *In re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275.

Right of creditors to contest.—While creditors may contest any petition in involuntary bankruptcy, no provision is made for contesting a petition in voluntary bankruptcy. *In re Pennington*, (W. D. Ky. 1915) 228 Fed. 388.

1912 Supp., p. 718, sec. 59b.

- I. Who may file petition in involuntary bankruptcy
- II. Form, averments, and amendment of petition

I. WHO MAY FILE PETITION IN INVOLUNTARY BANKRUPTCY (p. 718)

Creditors having provable claims.—Where one of several joint makers of a note failed and refused to pay his share and the others paid it in full and then filed an involuntary petition in bankruptcy against the one refusing to pay it was held that the petitioners were creditors having "provable claims" against the alleged bankrupt within the meaning of Bankruptcy Act. *Wright v. Rumph*, (C. C. A. 5th Cir. 1917) 238 Fed. 138, 151 C. C. A. 214.

Time when petitioner must be creditor.—Petitioning creditor must have provable claim when the petition is filed. *In re Van Horn*, (C. C. A. 3d Cir. 1917) 246 Fed. 822.

Before the petition, creditors may buy claims, and the bankrupt may induce creditors not to join in the petition; but to sustain the petition the requisite petitioners must be those who are creditors when the petition is filed. *In re Kehoe*, (C. C. A. 2d Cir. 1916) 233 Fed. 415, 147 C. C. A. 351.

Disqualification of creditors as petitioners—Generally.—In the case of *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173, the list filed by defendant showing his creditors at the date of the filing of the petition discloses 24, not including the plaintiff. Only 3 of them were for more than \$100, the highest being for \$252.56, and 12 of them were for sums under \$5. These small claims were current accounts for

groceries, drugs, dry goods, milk, gas and oil, telegrams, telephone bills, water, light and gas bills, etc., such as are contracted and paid for from month to month. The court said: "Such creditors are practically secured, as their bills have to be paid from month to month before further necessities can be obtained. The bankruptcy law is never invoked by any such small creditors, who themselves have adequate remedy for the collection of their accounts by cutting off further supplies. As to these accounts, I think the maxim, 'De minimis non curat lex,' applies."

Disqualification by participation in general assignment.—A creditor who has assented to an assignment by his debtor may not ordinarily thereafter file an involuntary petition in bankruptcy against him, based solely upon such assignment. *In re Campe*, (N. D. Cal. 1917) 240 Fed. 433.

II. FORM, AVERMENTS AND AMENDMENT OF PETITION (p. 722)

Averment of commission of act of bankruptcy.—The words "because of insolvency" in the allegation of a petition have been construed as meaning insolvency as defined by the Bankruptcy Act, § 1a (15). *In re Valentine Bohl Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 685, 140 C. C. A. 225.

General averments as to acts of bankruptcy are not sufficient. *In re Mason-Seaman Transp. Co.*, (S. D. N. Y. 1916) 235 Fed. 974.

But the jurisdictional averments that the defendant is "insolvent" in the sense in which the term is used in the statute, and "within four months next preceding the filing of this petition" the defendant, "while insolvent," committed the respective acts of bankruptcy as alleged, and "that, being insolvent, it did apply for a receiver for its property," have been held sufficient to give the court jurisdiction. *Graham Mfg. Co. v. Davy-Pocahontas Coal Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 488, 151 C. C. A. 424.

And an allegation that a confession of judgment was made with intent to prefer has been held sufficient though it does not set forth the facts and circumstances from which such intent may be inferred. "It would be quite impracticable to set out all the facts and circumstances upon which a party may rely to show intent, especially where, . . . it is necessary to show actual rather than constructive intent." *In re Musgrove Min. Co.*, (D. C. Idaho 1916) 234 Fed. 99.

Amendment of fatal defects.—It has been decided that the court has no power to allow an amendment to a petition setting up a new, separate, and independent act of bankruptcy which occurred more than four months before the application to insert it in the petition. But even if the court has power to allow amendments of

this character, it certainly ought not to do so, except upon a showing that the petitioner was duly diligent and that the interests of justice require such action. *In re Forbes*, (D. C. Mass. 1916) 235 Fed. 316.

Amendment of allegation as to act of bankruptcy.—The averments as to acts of bankruptcy may be amended. *In re Irish*, (E. D. Pa. 1915) 228 Fed. 573.

Amendment to avoid preference.—Although there has been an adjudication on a voluntary petition filed over four months after an alleged preferential transfer a petition in involuntary proceedings, commenced within the four months' period, may be amended where it alleges a preferential transfer in the language of the statute, omitting only the information necessary to enable the bankrupt to meet the charge, if necessary to protect rights which would be lost under the adjudication of the voluntary petition alone. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

1912 Supp., p. 726, sec. 59c.

Notice to creditors unnecessary.—Notice to creditors of the filing of a petition is unnecessary. *Coppard v. Gardner*, (Tex. Civ. App. 1918) 199 S. W. 650.

1912 Supp., p. 726, sec. 59d.

Notice required.—This section requires notification to "such creditors," meaning those creditors named in the list filed with the answer, and hence necessarily the creditors who were such when the petition was filed. *In re Kehoe*, (C. C. A. 2d Cir. 1916) 233 Fed. 415, 147 C. C. A. 351.

1912 Supp., p. 727, sec. 59f.

Jurisdiction.—The court which is charged with the duty of collecting and distributing a bankrupt estate alone has jurisdiction to authorize other creditors to intervene as parties. *Babbitt v. Read*, (C. C. A. 2d Cir. 1917) 240 Fed. 694, 153 C. C. A. 492.

Opposing petition—Involuntary proceedings.—When one having an interest in preventing or vacating an adjudication of bankruptcy on an involuntary petition seeks leave to appear and plead to the petition, and discloses as the occasion of his proposed participation in the proceedings an alleged unwarranted substitution by the debtor of an admission of the petition's allegation of insolvency in the place of his previously made denial of that allegation, the first question to be determined is whether the proposed defense was duly presented prior to the adjudication so made. The application calls for the exercise by the court of a sound discretion in determining, in the first place, whether the leave sought should be granted or refused.

Abbott v. Wauchula Mfg., etc., Co., (C. C. A. 5th Cir. 1916) 229 Fed. 677, 144 C. C. A. 87.

A motion to dismiss the petition being in the nature of a demurrer, the facts set forth therein, which clearly present the questions involved, will be considered as true. *Graham Mfg. Co. v. Davy-Pocahontas Coal Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 488, 151 C. C. A. 424.

Effect of intervention.—Where a person has, on his own motion, obtained an order allowing him to intervene in a bankruptcy proceeding he thereby submits himself to the jurisdiction of the court and must remain there so far as concerns any attack by him on the court's orders. *In re Ohio Copper Min Co.*, (S. D. N. Y. 1917) 241 Fed. 711.

A single intervening creditor has the right to carry on a petition good on its face. *In re Culin-Pace Contracting Co.*, (D. C. Mass. 1915) 224 Fed. 245.

Withdrawal from petition.—"It is not within the power of a creditor who joins in good faith in a petition to have his debtor adjudged a bankrupt thereafter to withdraw from such petition, and prevent the matter from proceeding, so long as any of the petitioning creditors insist that the matter do proceed. It is doubtful whether such petitioning creditor may withdraw in any event without leave of court so to do. Any other rule would leave the door open for the perpetration of fraud, and the surreptitious bargaining between the debtor and petitioning creditors in an effort to procure the withdrawal of a sufficient number of the latter to reduce the amount of claims or the number of creditors below the requirements of the statute. The court cannot inquire into the good faith of every attempted withdrawal, nor indeed is there any way to prove the secret bargainings between debtor and creditors, and the only way to prevent them is to hold such attempted withdrawals to be ineffectual so long as any of the petitioning creditors desire in good faith to prosecute their petition to an adjudication." *In re San Jose Baking Co.*, (N. D. Cal. 1916) 232 Fed. 200.

1912 Supp., p. 729, sec. 59g.

Sections 58a and 59g when read together relate only to dismissals upon application of a party in interest, and do not apply to the dismissal of a voluntary petition, upon the initiation of the court, and for the protection of its officers from the continuance of merely futile proceedings, on account of the bankrupt's own failure to take the preliminary steps necessary to bring the creditors before the court. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

Notice to creditors.—Where there is neither an application by the petition for

the dismissal nor is there the consent of any of the parties, and the application is opposed by the petitioning creditor, it has been held that notice of the application served upon the petitioning creditors who have appeared in the proceeding is sufficient and that it need not be served on all the creditors of the alleged bankrupt. *In re Mason-Seaman Transp. Co.*, (S. D. N. Y. 1916) 235 Fed. 974.

1912 Supp., p. 729, sec. 60a.

- I. Creation of preferences
- II. Constituent elements

I. CREATION OF PREFERENCES (p. 730)

Preference created by judgment.—A preference is created where a debtor suffers and procures a judgment to be obtained and entered against it. *Grant v. Auburn Nat. Bank*, (N. D. N. Y. 1916) 232 Fed. 201.

Transfer defined.—The word "transfer" is given a broad meaning by the statutory definition. A money payment is within this generality of definition. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Preference created by transfer.—See to same effect as original annotation, *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620; *Wolfe v. Bank of Anderson*, (C. C. A. 4th Cir. 1916) 238 Fed. 343, 151 C. C. A. 359.

A security transferred for future advances, in the absence of fraud or collusion, does not constitute a voidable preference. *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

A transfer to a third person may be a preference where done with intent to evade the statute. *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620; *McKnight v. Shadbolt*, (1917) 98 Wash. 665, 168 Pac. 473.

Insolvent partners of an insolvent partnership cannot rightfully devote the whole of their separate estates to the benefit of a single firm creditor under the guise of treating him as their private creditor, and so ignore their joint and several liability to all the firm creditors, and to do this operates to create a preference. *Ft. Pitt Coal Co., etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 162 C. C. A. 321.

Preference created by attachment.—The provision of the Bankruptcy Act making void the preference gained by an attachment does not preclude the sheriff from asserting his superior right to have his fees paid upon the discharge of the levy. *Gotham Nat. Bank v. Hickox*, (1917) 100 Misc. 372, 166 N. Y. S. 644.

Preference created by mortgage.—A mortgage operates as a preference when

it is executed within the four months' period and its effect is to enable one creditor to obtain a greater percentage of his debt than is obtained by other creditors of the same class. *In re Hawkins*, (N. D. Ga. 1917) 243 Fed. 792.

Preference created by payment—Payment of rent.—Where a tenant within the fourth months prior to his bankruptcy paid money to his landlord who instead of applying it to current rent applied it to the payment of back rent upon which he would have had only the right of an ordinary creditor it was held that such application was a preference. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1915) 225 Fed. 87.

Dividends paid by an assignee under a general assignment for the benefit of creditors do not come within the Bankruptcy Act's definition of preferences. *In re Vorek*, (D. C. Mont. 1916) 235 Fed. 655.

Money acquired after petition filed.—Bankrupts may properly pay a creditor money earned by them after petition filed or obtained from relatives and friends. *Cohen v. Bacharach*, (C. C. A. 2d Cir. 1916) 229 Fed. 385, 143 C. C. A. 505.

Money deposited in pursuance of contract to pay all lienable claims.—A contract between a railway company, a construction company, and the latter's sureties, which, after reciting the controversy as to whether the construction contract had been performed, the filing of claims for liens and attachment suits for more than the sum admitted by the railway company to be due, and the latter company's assertion of its right against the surety companies, fixed a sum to be paid by the railway company in full settlement of the mutual claims between it and the construction company, which sum, with an additional amount to be furnished by the surety companies, should be put into the hands of named trustees "to be used in paying all lienable claims" growing out of the construction contract, created an equitable lien in favor of all alleged liens which the parties should deem to have color of right, and the fund having thus been appropriated and set aside more than four months before bankruptcy proceedings against the construction company were begun, a preference was not created by the formal ascertainment of, and payment to, a specific beneficiary within the four months' period. *Johnson v. Root Mfg. Co.*, (1916) 241 U. S. 160, 36 S. Ct. 520, 60 U. S. (L. ed.) 934.

Banking transactions—In general.—A bank which is a creditor of a bankrupt who has in the usual course of business a sum of money on deposit to his credit at the date of bankruptcy is entitled to apply the same on its claim as a set off and such action does not create a preference. *Wichita Fourth Nat. Bank v. Smith*, (C. C. A. 8th Cir. 1916) 240 Fed. 19, 153 C. C. A. 55.

If an insolvent, within four months antecedent to bankruptcy, should make deposits or give checks to a bank to enable it to secure a preference, the transaction would be inimical to the bankruptcy law, and would be held void as a preference. But when an insolvent customer makes a deposit with his bank, in good faith and in the usual course of business, at any time within four months before the petition in bankruptcy is filed against him, the bank is allowed to credit the amount on notes of the bankrupt held by it. *American Bank, etc., Co. v. Coppard*, (C. C. A. 5th Cir. 1915) 227 Fed. 597, 142 C. C. A. 229.

Preferential payments to bank.—Where it appeared that deposits which accumulated in a bank were paid over to it by the officers of the bankrupt company there was held to be a preference it clearly appearing that the money was received by the bank when its officers had every reason to know that a preference would result and that the bank would get more on its general claim against the bankrupt than other creditors of the same class. *In re Fairburn Oil, etc., Co.*, (N. D. Ga. 1917) 240 Fed. 835.

II. CONSTITUENT ELEMENTS (p. 734)

In general.—A transfer by an insolvent person to constitute a voidable preference under this section as amended, must be on account of a pre-existing debt. *In re Mosher*, (N. D. N. Y. 1915) 224 Fed. 739.

Before adjudication bankrupts are at liberty to deal with their property as they see fit, so long as they do not give a preference to any creditor or impair the value of their estate. *O'Connell v. Worcester*, (1916) 225 Mass. 159, 114 N. E. 201.

In construing the meaning of the words "will be" in this section it has been declared that by the very language of section 60b the payment must operate as a preference at the time it is made, or not at all, and the belief of the creditor as to whether it will constitute a preference or not, must be of the time the payment is made. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Insolvency.—In a proceeding to determine whether a transfer of a debtor is a preferential one, the state rule of insolvency is the one to be followed. *Simpson v. Western Hardware, etc., Co.*, (1917) 97 Wash. 626, 167 Pac. 113.

Intention to give a preference is not material since the amendment of 1910. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Time of obtaining preference.—*The effect and object of the amendment* was to extend the time within which the conveyance or assignment or preference could

be assailed, and the property conveyed or assigned subjected as assets for the benefit of all the creditors alike, thereby avoiding the preference. It did not make void or voidable any mortgage, conveyance, assignment, or preference which would not otherwise have been voidable had it been made within the four months of the filing of the petition of bankruptcy; but it did have the effect to make the date from which the four months should be reckoned start from the recording or filing for resignation, rather than from the date of execution, though whether the transaction in question was void or voidable must be ascertained from the facts and circumstances existing at the date of execution, rather than from those obtaining at the date of the filing for record. *Gray, etc., Hardware Co. v. Guthrie*, (Ala. 1917) 75 So. 318.

In calculating the four months the preferential character of a transfer of property is to be determined as of the date of the filing of the petition. *Rubenstein v. Loftow*, (1916) 223 Mass. 227, 111 N. E. 973.

Where recording required.—Where registration and record of a deed was required and this was not done until within the prohibited four months' period, it is therefore voidable as to the excess over a homestead right. *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79.

A chattel mortgage is invalid against lien creditors and the trustee until acknowledged and where this act essential to validity is not performed until within the four months' period, the mortgage operates as a preference. *In re Caslon Press*, (C. C. A. 7th Cir. 1915) 229 Fed. 133, 143 C. C. A. 409.

Instrument valid under state law.—The recording of a conveyance by an insolvent is not "required" by law, within the meaning of the provisions of the Bankrupt Act, §§ 60a and 60b, where, under the applicable local law (Ohio Gen. Code, § 8543), the failure to record a deed does not render it invalid as to the grantor's creditors, but only as to subsequent bona fide purchasers without notice. *Carey v. Donohue*, (1916) 240 U. S. 430, 36 S. Ct. 386, 60 U. S. (L. ed.) 726, L. R. A. 1917A 295. See also *Johnson v. Barrett*, (N. D. Ga. 1916) 237 Fed. 112.

Where by the state law a deed is good between the parties and against all the world, except subsequent purchasers in good faith, and for a valuable consideration from the same vendor, whose conveyance is first recorded, a trustee in bankruptcy not having such a purchaser and not representing any such person, the conveyance is not by law required to be recorded against him. *Marsh v. Leseman*, (C. C. A. 2d Cir. 1917) 242 Fed. 484, 155 C. C. A. 260.

Necessity of diminishing estate.—Where a person agreed to loan money to a corporation on condition that she receive a mortgage for a like sum on designated property and delivered a check for the amount on like condition, it was held that a return of the money in a few days on her demand, because of a failure to give the mortgage, did not constitute a preference, as the money remained her money and no rights of creditors had attached. *Wallerstein v. Gallagher*, (E. D. Pa. 1916) 236 Fed. 602.

Where securities were loaned to a firm of brokers, the lender retaining title, for the purpose of hypothecation to aid the firm in financial difficulties a return of the securities to the lender was held not to constitute a preference. *Robinson v. Roe*, (C. C. A. 2d Cir. 1916) 233 Fed. 936, 147 C. C. A. 610.

Transfer for present consideration.—This section does not apply where the bankrupt receives a present consideration for the transfer. *Lake View State Bank v. Jones*, (C. C. A. 7th Cir. 1917) 242 Fed. 821, 155 C. C. A. 409; *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663; *O'Connell v. Worcester*, (1916) 225 Mass. 159, 114 N. E. 201.

Where property is transferred by a bankrupt, part of the consideration for such transfer being a pre-existing debt, and the other part a present payment of money, such transfer will be held void, except to the extent that a present consideration was paid therefor. *Payne v. Sehon*, (W. Va. 1917) 94 S. E. 34.

A chattel mortgage is not a preference where given at the same time a loan is made to the mortgagor. *In re Metropolitan Dairy Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 444, 140 C. C. A. 646.

Renewal of fire policies.—Where the fire insurance policy on a stock of goods was made payable to the seller and some of the policies were renewed within the four months' period and loss thereunder was paid to the seller within that period, there was held to be no preference. *Sullivan v. Myer*, (1917) 137 Tenn. 412, 193 S. W. 124.

The formal assignment of a policy on fire insurance has been held not to constitute a preference where the policy was actually pledged and the assignment actually made more than four months before bankruptcy. *Hecker v. Commercial State Bank*, (1916) 35 N. D. 12, 159 N. W. 97.

1912 Supp., p. 739, sec. 60b.

- I. Elements of voidability
- II. Recovery of voidable preference

I. ELEMENTS OF VOIDABILITY (p. 740)

In general.—"A trustee in bankruptcy is entitled under the Bankruptcy Act to

recover a transfer of property if the following circumstances concur: (1) That a 'transfer' of the property of the debtor has taken place. (2) That the debtor at the time of the 'transfer' was insolvent. (3) That the transfer was made within four months before the filing of the petition in bankruptcy, or after the filing and before the adjudication. (4) The transfer must enable the creditor to obtain a greater percentage of his debt than other creditors of the same class. (5) The person receiving it must have had reasonable cause to believe that the enforcement of the transfer would effect a preference." *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620. See also *Hagar v. Watt*, (M. D. Pa. 1915) 232 Fed. 373; *In re Terrell*, (C. C. A. 8th Cir. 1917) 246 Fed. 743; *Abele v. Beacon Trust Co.*, (1917) 228 Mass. 438, 117 N. E. 833; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969.

An act on the part of the bankrupt whereby he surrenders or encumbers his property or some part of it for the benefit of a particular creditor, and thereby diminishes the estates, is what is meant by the provisions of this section. *Bailey v. Baker Ice Mach. Co.*, (1915) 239 U. S. 268, 36 S. Ct. 50, 60 U. S. (L. ed.) 275.

The word "required" in this section refers directly to statutes in many states relating to recording which through various forms of expression seek to protect creditors by providing that their rights shall be superior to transfers while off the record. Recognizing the beneficial results of these enactments and intending that rights based thereon might be utilized for the advantage of bankrupt estates, Congress inserted (amendment of 1910) the clause "or of the recording or registering of the transfer if by law recording or registering thereof is required." Purchasers are not of those in whose favor registration is "required," but the reference is to persons concerned in the distribution of the estate, i. e., "creditors, including those whose position the trustee was entitled to take." It properly follows that before a trustee may avoid a transfer because of the provision in question he must in fact represent or be entitled to take the place of some creditor whose claim actually stood in a superior position to the challenged transfer while unrecorded and within the specified period. *Martin v. Commercial Nat. Bank*, (1918) 245, U. S. 513, 38 S. Ct. 176, 62 U. S. (L. ed.) —.

"The language of this provision requires the conclusion that unless a transfer, though it was made by the bankrupt within four months before the filing of the petition in bankruptcy, is one required by law to be recorded or registered, it is not voidable by the trustee unless the bankrupt was insolvent 'at the time of the

transfer,' and the transfer then operated as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, then had reasonable cause to believe that the enforcement of such transfer would effect a preference." *Martin v. Commercial Nat. Bank*, (C. C. A. 5th Cir. 1916) 228 Fed. 651, 143 C. C. A. 173. See also *Hawkins v. Dannenberg Co.*, (S. D. Ga. 1916) 234 Fed. 752.

The insolvency must exist at the time of the transfer, and the transfer must then operate as a preference and the creditor must then have reasonable cause to believe that the enforcement of the transfer would effect a preference. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Distinction between remedies under sections 60b and 67e.—The provisions of sections 60b and 67e, . . . disclose a wide difference as to what is required to show liability. To establish a liability under the former section no actual fraud need be shown. The section merely condemns a transfer by bankrupt within four months for the purpose of creating a preference, providing the party receiving the transfer has reasonable cause to believe that a preference was intended. The legal remedy is entirely adequate, and no relief is offered in equity that the law does not afford. To establish a liability under section 67e actual fraud must be shown, and suits under that provision are peculiarly within the cognizance of and should be entertained by the equity court." *Simpson v. Western Hardware, etc., Co.*, (W. D. Wash. 1915) 227 Fed. 304.

"The exercise of a pre-existing right, lawful in the local jurisdiction, although occurring within the prescribed period, is not an illegal preference, unless made with intent to hinder or defraud creditors." *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332.

Reasonable cause to believe transaction would effect preference.—The amendment of 1910 does not dispense with the necessity of proving reasonable cause to believe that such transfer would effect a preference. *Maysville First Bank v. Alexander*, (1915) 49 Okla. 418, 153 Pac. 646; *Grandison v. Robertson*, (C. C. A. 2d Cir. 1916) 231 Fed. 785, 145 C. C. A. 605.

The creditor who receives a partial payment on his debt, so far as the question of his having reasonable cause to believe that the enforcement of the payment would effect a preference is concerned, has the right to look at the bankrupt's estate at the time the payment is made, bankruptcy may never occur; but if it does, the creditor may not be charged with a knowledge of what an estate will pay out after it has undergone the shrinking process of the courts. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Reasonable cause to believe that payments would effect a preference has been

held to be established where in connection with other evidence it appeared that the sale of the property and distribution of the proceeds was in pursuance of a plan to pay the local creditors, regardless of nonresident creditors. *D. C. Wise Coal Co. v. Small*, (C. C. A. 8th Cir. 1915) 225 Fed. 524, 140 C. C. A. 508.

"The creditor, or his agent acting in the matter, must have had such information at the time as gave him reasonable cause to believe that the taking of the transfer would, as to then existing creditors, if the transfer were later enforced, enable such creditor to obtain a greater percentage of his debt than any other of such creditors of the same class. This necessarily means that the creditor taking the security, or his agent acting in the matter, must have had reasonable cause to believe such debtor was then insolvent, and insolvency must then have existed, as otherwise the enforcement of the security could not work a preference." *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234.

"Reasonable cause to believe" is usually inferred from such facts as from inability to pay bills in the usual course of business as they mature, from poor business, and from transactions of a character not ordinarily resorted to by solvent traders. *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

"Where in any particular case it is shown that a creditor at the time he receives full payment of his debt knows that his debtor is insolvent or has knowledge of such facts, which investigated would show insolvency, it necessarily results that creditor had reasonable cause to believe that the enforcement of the transfer would effect a preference. But in a case where the transfer or payment amounts to but a small percentage of the total debt, knowledge of the insolvency of the debtor or of facts which if investigated would lead to such knowledge is not conclusive upon the question as to whether the creditor had reasonable cause to believe that the enforcement of the transfer or payment would effect a preference." *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Question of fact.—Whether a person had such cause is a question of fact to be determined from all the circumstances attending the transaction and the relations existing between the parties thereto. *Marshall v. Nevins*, (C. C. A. 9th Cir. 1917) 242 Fed. 476, 155 C. C. A. 252; *Stephen Putney Shoe Co. v. Dashiell*, (C. C. A. 4th Cir. 1917) 246 Fed. 121, 153 C. C. A. 347; *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332; *Putman v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969.

Each case is dependent on its own circumstances. *Healey v. Wehrung*, (C. C. A. 9th Cir. 1916) 229 Fed. 686, 144 C. C.

A. 96; *Clifford v. Morrill*, (D. C. Mass. 1916) 230 Fed. 190; *Peninsula Bank v. Wolcott*, (C. C. A. 4th Cir. 1916) 232 Fed. 68, 146 C. C. A. 260, Ann. Cas. 1918C 477; *Grant v. National Bank*, (N. D. N. Y. 1916) 232 Fed. 201; *Paris First Nat. Bank v. Yerkes*, (C. C. A. 6th Cir. 1916) 238 Fed. 278, 151 C. C. A. 294; *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

Presumption as to belief.—"The pledgee, taking possession in pursuance of and in the enforcement of his pre-existing right, is prima facie presumed to take in the belief in his right, and not in the belief that his taking is with intent to give himself a preference." *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332.

The proof must show the insolvency of the debtor as defined by subdivision 15 of section 1. *In re Walker Starter Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 285, 148 C. C. A. 645.

Positive knowledge unnecessary.—Knowledge of sufficient facts and circumstances to put a prudent man upon inquiry is all that is required. *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620; *Maysville First Bank v. Alexander*, (1915) 49 Okla. 418, 153 Pac. 646.

The trustee need not prove absolute knowledge, but only such circumstances as would lead an intelligent and prudent business man to entertain the belief that the transfer would give him a preference over other creditors. *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360. See also *Walter v. National Fire Ins. Co.*, (1917) 101 Neb. 639, 164 N. W. 569.

The knowledge which a creditor has that his payment is out of funds which (if liquidation were had) would be needed equally by other creditors brings him within the language of the statute. *Scheuer v. Katsoff*, (E. D. N. Y. 1916) 233 Fed. 473.

In the case of a transfer of accounts by a bankrupt to a bank within four months of the filing of the petition under such circumstances as naturally would have caused an ordinary person, had he been the creditor receiving the preference, to have believed that thereby a preference would be effected, it has been declared that property received under such circumstances constitutes a voidable preference and the trustee can recover for the benefit of the bankrupt estate. *Aronin v. Security Bank*, (C. C. A. 2d Cir. 1915) 228 Fed. 888, 143 C. C. A. 286.

Duty of inquiry.—"When put on inquiry and there is a failure to inquire, it may be presumed that inquiry would have disclosed the truth, all the facts; but when put on inquiry, and due inquiry is made and the truth is either wholly suppressed or so colored and explained that

the creditor taking the security does not, in fact, have the information which would give reasonable cause to believe, knowledge cannot be imputed to him and he held to have had reasonable cause to believe." *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234; *In re States Printing Co.*, (C. C. A. 7th Cir. 1917) 238 Fed. 775, 151 C. C. A. 625. See also *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360; *Walter v. National Fire Ins. Co.*, (1917) 101 Neb. 639, 164 N. W. 569.

The question of knowledge ordinarily is one of fact dependent on the evidence in each case, and no rule can be formulated by which all cases can be mathematically adjusted. *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360.

Mere suspicion is not sufficient to charge creditors with knowledge of, or reasonable cause to believe, the debtor is insolvent. There must be evidence of facts sufficient to put a reasonably prudent person upon inquiry, which, if pursued, would show that the debtor is insolvent and that a preference will be the result. *Nichols v. Elken*, (C. C. A. 8th Cir. 1915) 225 Fed. 689, 140 C. C. A. 563; *Brookheim v. Greenbaum*, (S. D. N. Y. 1912) 225 Fed. 635; *Rosenman v. Coppard*, (C. C. A. 5th Cir. 1916) 228 Fed. 114, 142 C. C. A. 520; *Putman v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969; *Rubenstein v. Lottow*, (1916) 223 Mass. 227, 111 N. E. 973; *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

Knowledge presumed.—*In the case of a mortgage given to cover the whole of a stock of goods* it has been declared that the giving and receiving of such a mortgage is an act entirely out of the ordinary course of business and is almost conclusive evidence of the intent of the mortgagor to give and of the mortgagee to receive a preference over other creditors. *Schneider v. Bosley*, (S. D. 1917) 165 N. W. 1.

A mortgagee is bound to draw such inference as would naturally follow from the facts coming to his attention; and, where those facts would ordinarily excite suspicion as to solvency and cause inquiry, he is to be held to such knowledge as a reasonable inquiry would have furnished. *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

Where the purchaser and assignee of a chattel mortgage knew or ought to have known that it was voidable because of its preferential character and he obtained possession of the mortgaged property and, through foreclosure proceedings, converted it to his own use, it was held that he became liable for its value when the mortgage was set aside. *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348.

Where there is no room to doubt that a wife knew of, and, indeed, participated in, a series of nearly simultaneous transac-

tions by which her husband was divesting himself of practically all his property for the payment of part of his debts, and that she knew he was leaving a large part unpaid and unsecured, it was said to follow that the preferential payment was voidable as against her and the money could have been recovered from her, if it had remained in her hands; and it followed, also, that any attempt by her to put it beyond the reach of a possible action by a possible trustee was voidable, as being in hindrance and defeat of that portion of the Bankruptcy Law which contemplated that the trustee should recover such preferences. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

Whether or not the debt secured by a lien is a pre-existing one must be determined as of its date of the creation of the lien. *In re Mossler Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 262, 152 C. C. A. 250.

Intent to prefer.—The intent of the debtor is not of any consequence. *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234; *Abele v. Beacon Trust Co.*, (1917) 228 Mass. 438, 117 N. E. 833; *Payne v. Seton*, (W. Va. 1917) 94 S. E. 34.

Facts of case as controlling.—Under the facts of the particular case there was had to be a preferential transfer in each of the following cases: *In re French*, (N. D. N. Y. 1916) 231 Fed. 255 (chattel mortgages and assignment); *Rosenthal v. Bronx Nat. Bank*, (C. C. A. 2d Cir. 1916) 231 Fed. 691, 145 C. C. A. 577 (chattel mortgages); *In re Alden*, (D. C. Me. 1916) 233 Fed. 160 (mortgage); *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348; *Scheuer v. Katsoff*, (E. D. N. Y. 1916) 233 Fed. 473 (payments); *Security Trust, etc., Bank v. Wm. R. Staats Co.*, (C. C. A. 9th Cir. 1916) 233 Fed. 514, 147 C. C. A. 400 (mortgage).

II. RECOVERY OF VOIDABLE PREFERENCES (p. 744)

In general.—Where it is shown that all the elements of a voidable preference, as defined by this section, exist there may be a recovery by the trustee. *State Bank v. Ingram*, (C. C. A. 8th Cir. 1916) 237 Fed. 76, 150 C. C. A. 278.

"A long line of decisions has determined that the relief sought, if granted, under section 60, extends only to an avoidance of the preference secured by the lender himself as a creditor, or as the practical agent of one who is a creditor." *Johnstone v. Babb*, (C. C. A. 4th Cir. 1917) 240 Fed. 668, 153 C. C. A. 466.

A suit to recover property claimed to have been received as a voidable preference is not a part of the "proceedings in bankruptcy" but is a controversy either at law or in equity between the trustee and a third party. *McCulloch v. Daven-*

port Sav. Bank, (S. D. Ia. 1915) 226 Fed. 309.

A contract of conditional sale which was not recorded until after the conditional purchasers had become insolvent has been held not to operate as a preferential transfer by them, within the meaning of this section of the Bankruptcy Act. *Bailey v. Baker Ice Mach. Co.*, (1915) 239 U. S. 268, 36 S. Ct. 50, 60 U. S. (L. ed.) 275.

Preference created by judgment.—A creditor who recovers a judgment, by consent or in invitum, and by execution sale collects his money within four months preceding bankruptcy, and with reasonable cause to believe, etc., receives a voidable preference, which he must repay to the trustee. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Improvements made on property transferred.—Where a transferee immediately after taking possession of property transferred within the four months' period made large expenditures in improvements it was held that any property thus added was no part of the estate in bankruptcy. *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79, Ann. Cas. 1917C 1006.

Pleadings.—A petition is defective where it omits any statement that the recipients of a conveyance were chargeable with notice that a preference would result. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

A trustee must allege and prove all the statutory elements of a preference before he can recover from the defendant. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

In a suit to recover property claimed to have been received as a voidable preference no allegation or proof of a demand and refusal is necessary. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

Evidence.—"The burden of proof is on the trustee to show that the creditor had reasonable ground to believe that the transfer of the security would effect a preference." *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364. See also *In re Hull*, (N. D. Ohio 1915) 224 Fed. 796; *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234; *Rosenman v. Coppard*, (C. C. A. 5th Cir. 1916) 228 Fed. 114, 142 C. C. A. 520; *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89; *Clifford v. Morrill*, (D. C. Mass. 1916) 230 Fed. 190; *Marshall v. Nevins*, (C. C. A. 9th Cir. 1917) 242 Fed. 476, 155 C. C. A. 252; *Brown v. Weimar First State Bank*, (Tex. Civ. App. 1918) 199 S. W. 895; *Simpson v. Western Hardware, etc., Co.*, (1917) 97 Wash. 626, 167 Pac. 113; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969.

The burden of proof rests on the trustee to show knowledge. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

Property transferred by a conveyance which operates as a preference can be recovered from any one who is not a purchaser in good faith and for value, and that the burden rests upon the person claiming to be such purchaser to show that he paid value. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

In order to establish that a mortgage was a preference it is necessary for the trustee to prove that the mortgage was given while the mortgagor was insolvent, that the effect of the enforcement of such mortgage would enable the mortgagee to obtain a greater percentage of its debt than other creditors of the same class, and that the mortgagee had reasonable cause to believe that it was intended thereby to give a preference. *In re Walker Starter Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 285, 148 C. C. A. 645.

Suit under this section controversy in bankruptcy proceedings.—A suit brought under this section by a trustee in bankruptcy to set aside a conveyance on the ground that it was made with a view to giving a preference in violation of the Bankruptcy Act is a controversy arising in bankruptcy proceedings and the decree therein is final, under the Act of Congress of Jan. 28, 1915, 38 Stat. L. 804, and the only right of review by the Supreme Court is by a writ of certiorari. *William R. Staats Co. v. Security Trust, etc., Bank*, (1917) 243 U. S. 121, 37 S. Ct. 336, 61 U. S. (L. ed.) 632.

Hearing on appeal.—The finding of the referee as to whether there has been a preference will not, especially when confirmed by the lower court, be reversed on appeal. *Ullman v. Coppard*, (C. C. A. 5th Cir. 1917) 246 Fed. 124, 158 C. C. A. 350; *Stephen Putney Shoe Co. v. Dashiell*, (C. C. A. 4th Cir. 1917) 246 Fed. 121, 158 C. C. A. 347.

Where the referee found as a conclusion of fact that the appellee bank had no knowledge or reasonable cause to believe that the debtor company was insolvent when, within four months prior to its bankruptcy, it transferred to the bank a certain note to apply upon or as security for a pre-existing debt, it was held that in the absence of a preponderance of opposing proof such as to warrant a reversal the decree appealed from would be affirmed. *Owens v. Farmer's Bank*, (C. C. A. 4th Cir. 1915) 228 Fed. 508, 143 C. C. A. 90.

1912 Supp., p. 747, sec. 60d.

A petition for re-examination is a condition precedent to any determination by the referee that any portion of the amount

paid to an attorney, as specified in the section, may be recovered by the trustee for the benefit of the estate as an excess over and above what is reasonable. *In re Union Dredging Co.*, (D. C. Del. 1915) 225 Fed. 188.

1912 Supp., p. 748, sec. 61a.

Deposit of funds in special bearing interest savings accounts.—Under the provisions of this section and section 47a(3) the placing of funds by the trustee in banks in special interest bearing savings account instead of depositing them in a general checking account is unauthorized. *In re Dayton Coal, etc., Co.*, (E. D. Tenn. 1916) 239 Fed. 737.

1912 Supp., p. 749, sec. 62a.

Necessary expenses allowed.—*Expense for rent*.—If the premises are needed and used by the trustee for carrying on the business or other administration purposes, their rent, or, at least, their rental value, forms an expense of administration. *Louisville Woolen Mills v. Tapp*, (C. C. A. 6th Cir. 1917) 239 Fed. 463, 152 C. C. A. 341. See also *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681.

Attorney fees.—*In general*.—In a case in which compensation is sought by attorneys for services rendered by them in the commencement and prosecution of the preference suit in the name of the trustee and with his consent, and the services so performed have resulted in bringing a fund into the court, which is the only source of dividends open to the general creditors of the bankrupt estate, it has been held that they are entitled to an allowance for such services and also expenses out of the fund. *In re Stearns Salt, etc., Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 1, 140 C. C. A. 461.

Fees of trustee's attorney.—As a general rule an allowance should not be made to a trustee in bankruptcy for compensation for an attorney employed by him for doing such things for the protection and benefit of the estate as do not require professional skill but are well within the ability of a person possessing ordinary intelligence and business capacity. *In re Union Dredging Co.*, (D. C. Del. 1915) 225 Fed. 188.

Fees of attorney for receiver.—Fees should be allowed only for services beneficial to the estate. *In re Williams*, (N. D. Ohio 1917) 240 Fed. 788.

1912 Supp., p. 753, sec. 63a (1).

The date of filing the petition marks the line between claims which are provable and those which are not. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486; *In re Leslie, etc., Co.*, (D. C.

Mass. 1916) 230 Fed. 465; *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681; *In re Henry*, (S. D. N. Y. 1916) 238 Fed. 639.

The liability of a building and loan association to stockholders for amounts paid in and proportions of profits, if any, is fixed, notwithstanding the fact that it may require examination of books to ascertain the exact amount due to each shareholder, and a claim therefor is provable. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n.*, (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22.

Judgments.—The Bankruptcy Act expressly makes it unimportant whether or not the liability is payable at the time of the filing of the petition. If the debt was then a fixed liability in the form of a judgment the right to file the claim existed. A judgment is primarily absolutely owing when rendered and entered. If it has been paid before the petition in bankruptcy against the judgment debtor has been filed, or if some agreement of satisfaction has been had, or, perhaps, if the judgment is of a kind where it is very uncertain whether an actual duty to pay has arisen, in such cases the judgment would not be absolutely owing. *Moore v. Douglas*, (C. C. A. 9th Cir. 1916) 230 Fed. 399, 144 C. C. A. 541, *affirming* (S. D. Cal. 1915) 225 Fed. 683.

A debt founded on a judgment obtained in an action in which it was claimed that the bankrupt had obtained property by false and fraudulent representations is provable. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

Where a judgment in a state court has not been paid, or has not been superseded on appeal by a bond given pursuant to the state law, the judgment debtor cannot avoid the effect of levy and execution, and it is a provable debt. *Moore v. Douglas*, (C. C. A. 9th Cir. 1916) 230 Fed. 399, 144 C. C. A. 541, *affirming* (S. D. Cal. 1915) 225 Fed. 683.

The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

Notes.—Claims owing on notes may be proved. *In re Wisconsin Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 281, 148 C. C. A. 183; *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792; *In re Lance Lumber Co.*, (C. C. A. 3d Cir. 1916) 237 Fed. 357, 150 C. C. A. 371; *In re Biehl*, (E. D. Pa. 1916) 237 Fed. 720.

Where there was a deficiency judgment entered on the foreclosure of a mortgage given to secure notes which the indorsers

had paid, it was held that on taking up the notes the indorsers were entitled to prove their claim for the full amount thereof and receive a dividend on the full amount of such claim and then apply the proceeds of the mortgaged property applicable to the payment of the balance of the claim on the bonds or deficiency judgment. *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792.

Where the evidence as a whole justifies the inferences that the payees of notes, executed by individual members of a firm, understood that the loans were made to the firm and for its benefit; and that the notes were given with the intention of binding the firm, and in the belief that such a result was being accomplished, it has been held that the notes are provable against the estate of the firm. *Frederick v. Citizens' Nat. Bank*, (C. C. A. 3d Cir. 1916) 231 Fed. 667, 145 C. C. A. 553.

The indorser on the note of a bankrupt who pays the note cannot prove up his claim on the note so paid and also on the implied promise of the bankrupt made at the time of the indorsement to repay him in case he is compelled to pay such note. *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792.

A claim, evidenced by a note, for services rendered by a wife to her husband, contracts for which are permitted by the laws of the state, is provable and should not be made subordinate to the claims of other creditors. *In re Starr*, (N. D. Cal. 1916) 232 Fed. 416.

Checks.—One from whom a check was obtained by fraud does not have a provable claim against a bankrupt to whom it was indorsed and who occupies the position of a bona fide holder for value. *In re U. S. Hair Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 703, 152 C. C. A. 537.

Indorsements.—The holder of a note indorsed by a bankrupt does not lose his right to prove his claim thereon by the fact that he accepts after the petition in bankruptcy a renewal note from the maker without the bankrupt's indorsement. *In re Henry*, (S. D. N. Y. 1916) 238 Fed. 639.

Surety debts.—Where the condition in a contractor's bond was broken before his bankruptcy, claims thereunder then became a "fixed liability." *U. S. v. Illinois Surety Co.*, (C. C. A. 7th Cir. 1915) 226 Fed. 653, 141 C. C. A. 409.

Rent.—Any amount which may have been due for rent of premises used by a bankrupt tenant, as well as any periodical payments reserved in a lease which have accrued at the time of the filing of the petition in bankruptcy are claims presentable and allowable against the estate. *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681.

Where the state law gives the landlord a lien for the unexpired term of the lease,

or any part of it, the claim for rent for that period may be proved in bankruptcy and enforced against the proceeds of the property subject to the lien, even though the debt may not be provable against the general estate. *Lontos v. Coppard*, (C. C. A. 5th Cir. 1917) 246 Fed. 803.

Claims under lease of machinery.—Where under such a lease no formal notice or re-entry is required in case of the termination of the lease by insolvency or bankruptcy, termination is coincident with the bankruptcy itself and liability thereunder becomes fixed. *In re Desnoyers Shoe Co.*, (C. C. A. 7th Cir. 1915) 227 Fed. 401, 142 C. C. A. 97.

The expenses and compensation of an assignee for the benefit of creditors may be proved and allowed where the services rendered were beneficial to the estate. *Bramble v. Brett*, (C. C. A. 8th Cir. 1916) 230 Fed. 385, 144 C. C. A. 527; *In re Sobol*, (S. D. N. Y. 1915) 230 Fed. 652.

Interest.—In case of claims strictly against the assets of the bankrupt, interest is allowable only up to the time of filing the petition in bankruptcy. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

But this rule has no application to solvent estates. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Contingent claims.—This act makes no provision for the payment of such claims and they are not provable. *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681; *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792; *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

1912 Supp., p. 760, sec. 63a (3).

Costs arising in connection with a writ of attachment in a state court which accrue up to the time of the institution of bankruptcy proceedings and which are provable and privileged under the state law, are provable and preferred. *In re Romm*, (D. C. Mass. 1916) 235 Fed. 383.

When a trustee contests the claim of an outsider, the controversy is inter partes and costs follow as in any other case. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 232 Fed. 1004.

1912 Supp., p. 760, sec. 63a (4).

Contracts and open accounts.—Where a creditor has a claim of debt against a firm, evidenced by an absolute obligation in writing for its payment, and also an optional claim in tort for misappropriation of money or property (the damages in which are measured by the same debt), and also has a claim against an individual upon a separate and independent contract of bailment (damages flowing from the

breach of which are measured by the same debt), he may prove his claim of debt against the bankrupt estate of the firm, and (after allowing credit for the dividend received) prove a claim for the balance due him against the bankrupt estate of the individual, notwithstanding the fact that the individual is a member of the firm and liable as a partner for the firm debt. *In re Biehl*, (E. D. Pa. 1916) 237 Fed. 720.

A claim for damages for the breach of an executory contract of lease, where the lessee is a corporation and has voted to wind up and its stockholders have applied to the court for the appointment of a receiver to wind up its affairs and dissolve the corporation, is a claim founded upon a contract and provable in bankruptcy. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

Where a contract made upon a good consideration obligating him to pay the creditor a certain sum per day during the creditor's life, the undertaking is absolute, and the liability "fixed," "founded upon a contract" and therefore provable. *In re Miller*, (D. C. Mass. 1915) 225 Fed. 331.

Taxes on personal property of a bankrupt, and which are due or past due, are quasi contractual and are provable debts. *Kaw Boiler Works v. Schull*, (C. C. A. 8th Cir. 1916) 230 Fed. 587, 144 C. C. A. 641, L. R. A. 1916E 628.

Stipulated attorney's fees on foreclosure of mortgage.—A sale free from liens in the bankruptcy court is not the equivalent of a foreclosure by the mortgagee of the mortgage lien, which will permit the mortgage to an allowance of an attorney's fee under a stipulation in the mortgage providing for the allowance of an attorney's fee in case legal proceedings are instituted on the note or mortgage. *Gügel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

Breach occasioned by bankruptcy.—A claim for damages for the breach of an executory contract is a claim "founded upon a contract," within the meaning of the statute, and is provable in bankruptcy. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539; *In re Schultz*, (D. C. Mass. 1916) 235 Fed. 907.

Upon a breach of an executory contract occasioned by bankruptcy, a sum stipulated to be liquidated damages in case of a breach has been held to be provable. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486.

The filing of an involuntary petition in bankruptcy against a corporation, followed by an adjudication of bankruptcy, is the equivalent of an anticipatory breach of its executory contract, where

the trustee in bankruptcy does not elect to assume performance, and gives rise to a claim provable in the bankruptcy proceedings, as one "founded" "upon a contract, express or implied." *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

A bankruptcy court, in allowing as a provable debt a claim for damages arising out of the anticipatory breach by the bankrupt of its executory contract with a hotel company, should not limit it to the damages for the six months following such breach, although the contract reserved to the hotel company an option to revoke the privileges by giving six months' notice in writing of its election so to do, in which case both parties were to be released from further liability at the expiration of the six months. *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

Claims for tort.—A claim against a bailee for hire for the destruction of property in his possession although suable either in contract or tort is provable under this section. *Fingold v. Schacter*, (1916) 223 Mass. 274, 111 N. E. 903.

A claim for the conversion of money, founded on an implied contract to pay over any money collected, is a provable one. *Sabinal Nat. Bank v. Bryant*, (Tex. Civ. App. 1917) 191 S. W. 1179.

A claim for damages for the conversion of bonds and stocks has been held to be a provable debt. *Pitcairn v. Scully*, (1916) 252 Pa. St. 82, 97 Atl. 120.

The holder of collateral security has a special property in it which entitles him to recover its value, to the extent at least of his debt, if it be converted by the debtor. Such a liability, arising after the institution of the bankruptcy proceedings, would not, however, constitute a provable debt thereunder, and would not be affected by that law. *Hardcastle v. National Clothing Co.*, (1917) 137 Tenn. 64, 191 S. W. 524.

A claim against stockbrokers who have repledged stock left with them as collateral is a claim provable in bankruptcy as being one founded "upon a contract express or implied." *Wood v. Fisk*, (1915) 215 N. Y. 233, 109 N. E. 177. Compare *Pitcairn v. Scully*, (1916) 252 Pa. St. 82, 97 Atl. 120.

1912 Supp., p. 765, sec. 63b.

Construction and application.—"It is thoroughly established that paragraph 'b' does not enlarge the class of debts which may be proved under paragraph a; it does, however, permit an unliquidated claim to be liquidated as the court may direct provided, always, such claim is one within the provisions of 63a." *Moore v. Douglas*, (C. C. A. 9th Cir. 1916) 230

Fed. 399, 144 C. C. A. 541, affirming (S. D. Cal. 1915) 225 Fed. 683.

This provision relates merely to procedure, and does not define an additional class of debts which are provable. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

Reversed judgment.—Where a judgment in an action in a state court for breach of contract to marry has been reversed the claim is an unliquidated one. *In re Martin*, (C. C. A. 2d Cir. 1915) 228 Fed. 184, 142 C. C. A. 540.

1912 Supp., p. 766, sec. 64a.

Construction and application.—The provisions of section 64 with relation to the payment of taxes, costs, filing fees, costs of administration, wages due to employees, and debts owing to any person entitled to priority, all pertain to the general assets of the estate, and have no relation to property which by reason of liens never became any part of the bankrupt estate. *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318.

This section should be strictly construed and its benefit should not be extended so as to allow the owner of premises against which a tax has been levied to claim priority for the payment of such taxes out of the assets of a bankrupt tenant who by the terms of the lease is obligated to pay them. *In re William A. Harris Steam Engine Co.*, (D. C. R. I. 1915) 225 Fed. 609.

This section has no reference to lien creditors, but is intended to apply only to general creditors, and should be read in connection with subsection "b" relating to debts that are to be paid in full. *Bird v. Richmond*, (C. C. A. 4th Cir. 1917) 240 Fed. 545, 153 C. C. A. 349.

Taxes entitled to priority.—Taxes valid under the state law are entitled to priority. *Delahant v. Oklahoma County* (C. C. A. 8th Cir. 1915) 226 Fed. 31, 141 C. C. A. 139; *In re United Five & Ten Cent Store*, (S. D. N. Y. 1917) 242 Fed. 1005.

Under this section taxes are placed in a class by themselves. They are not preferred claims against the estate; they stand ahead of preferred claims. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

If there be general assets in the estate, the taxes will be given preference "in advance of the payments of dividends to creditors," as provided by section 64a; but in the absence of a lien this is the only priority to which the claim for taxes is entitled. *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318.

Taxes which are not a lien are not to be given a priority over liens. *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318.

Interest.—The state clearly has the right to charge upon taxes not paid when

due such interest as will make the payment, when received, equivalent to payment at the appointed time. This interest is part of the tax and entitled to priority. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

Penalty for failure to pay tax.—It cannot be said that a penalty imposed for failure to pay a tax is a part of the original tax, in the sense that interest is. A penalty, as applied to cases of this character, means a punishment imposed for failure to make the payment on time. Section 64a contains no provision for the payment of penalties; and it cannot fairly be construed to include them, especially when the estate is in course of administration during the entire period of their accrual. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

Duties on goods imported by the bankrupt are a "tax" within the meaning of this section. *In re Rosenthal*, (S. D. N. Y. 1916) 235 Fed. 315.

Mere volunteers who pay taxes have no claim against the trustee for the amount so paid. *In re Gracey*, (E. D. Pa. 1917) 241 Fed. 981.

Power of court to reassess tax.—There is said to be no doubt of the power and duty of the court to reassess the tax in case objection is made, regardless of its original assessment by the proper state authority. *In re Simcox*, (S. D. N. Y. 1917) 243 Fed. 479. See also *In re E. C. Fisher Corp.*, (D. C. Mass. 1915) 229 Fed. 316; *In re United Five & Ten Cent Store*, (S. D. N. Y. 1917) 242 Fed. 1005.

1912 Supp., p. 770, sec. 64b.

Term "bankrupt estates" construed.—By the words "of estates," in section 62, *supra*, and "bankrupt's estates," in section 64, subsec. "b," is meant the unincumbered assets generally of a bankrupt, properly administrable in bankruptcy, as distinguished from that of the property of a bankrupt dedicated by law to the payment of a particular obligation, or upon which there is a specific lien. The last named section is intended particularly to give the order to be observed by trustees in the payment of such unincumbered estate. *In re Rauch*, (E. D. Va. 1915) 226 Fed. 982.

1912 Supp., p. 770, sec. 64b (1).

Claim of assignee for creditors for preserving estate.—An assignee or trustee who has in good faith protected and preserved property to the benefit of the estate of a bankrupt under an assignment or trust deed valid while he was acting under it is entitled to payment of his legitimate expenses and to compensation for his services and for the services of his attorney out of the proceeds of the property he has preserved which subsequently

comes to the trustee in bankruptcy. *Bramble v. Brett*, (C. C. A. 8th Cir. 1916), 230 Fed. 385, 144 C. C. A. 527. See *In re Sobol*, (S. D. N. Y. 1915) 230 Fed. 652.

Clerk's fee.—In the order of priority established by the statute the clerk's fee takes precedence over the fees of the bankrupt's attorney, and a bankrupt cannot reverse this order by paying his attorney first and not paying the clerk at all. *In re Darr*, (N. D. Cal. 1916) 232 Fed. 415.

1912 Supp., p. 772, sec. 64b (3).

The term "costs of administration" to which orders of court authorizing loans to the bankrupt estate in order to enable it to complete a contract subjects such loans, has been held to cover not only court costs but to refer to all the expenses attending the execution of those orders of the court entered with reference to the furnishing of the contract asset of the bankrupt, and to include labor and material claims. *In re Farley*, (C. C. A. 7th Cir. 1915) 227 Fed. 378, 142 C. C. A. 74.

As to the allowance of costs in general, see *In re Rauch*, (E. D. Va. 1915) 226 Fed. 982.

Compensation to receiver.—Assets in the hands of the trustee are subject to reduction by paying out of the same the amount for which in equity the assets were chargeable as compensation to the receiver before they came into the hands of the trustee, and claim therefor is entitled to priority. *Paine v. Archer*, (C. C. A. 9th Cir. 1916) 233 Fed. 259, 147 C. C. A. 265.

Expense of appraisal.—Where an appraisal was reasonably necessary, in connection with the proper preservation and care of the property received by the assignee, the assignee, if he has paid the expense of it, should be allowed therefor in his account with the trustee. *In re Cooper*, (D. C. Mass. 1917) 243 Fed. 797.

Attorney's fees.—The only legal services which may be paid or secured are those directly connected with the bankruptcy proceeding. *Magee v. Fox*, (C. C. A. 2d Cir. 1916) 229 Fed. 395, 143 C. C. A. 515.

Receiver's certificates issued under authority of the state court are not liens on the property when it comes into the bankruptcy court which the attorney's fees allowed by law to the bankrupt cannot displace. *Smith v. Shenandoah Valley Nat. Bank*, (C. C. A. 4th Cir. 1917) 246 Fed. 379, 158 C. C. A. 443.

Division of fee.—The court should not be called upon to settle differences between counsel for petitioning creditors as to what proportion of the total amount allowed each should receive. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1916) 231 Fed. 946, 146 C. C. A. 142.

Services of counsel for trustee.—The fee should be reasonable and an excessive al-

lowance will be reduced. *In re Atkins*, (W. D. Ky. 1915) 225 Fed. 639.

But it is for the trial court to determine the allowance to be made to attorneys for the trustee and the appellate courts will not reverse unless the decision is unmistakably wrong or unless a plain abuse of discretion is shown. *In re Grant*, (C. C. A. 2d Cir. 1916) 238 Fed. 132, 151 C. C. A. 208.

Attorneys' fees for creditors.—See *In re Sage*, (S. D. Ia. 1915) 225 Fed. 397; *In re Williams*, (N. D. Ohio 1917) 240 Fed. 788; *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Attorney's fee denied.—Services rendered to bankrupt prior to bankruptcy are not included by the terms of this provision. *Magee v. Fox*, (C. C. A. 2d Cir. 1916) 229 Fed. 395, 143 C. C. A. 515.

Counsel fees for services in resisting adjudication if allowed at all should only be allowed in extreme cases where such action is plainly necessary to avoid great hardship and injustice. *In re Murphy Boot, etc., Co.*, (D. C. Mass. 1917) 242 Fed. 991.

An attorney for a voluntary bankrupt is not entitled to a fee for services in having a homestead exemption set apart for said bankrupt and attending a hearing before the referee upon objections filed by creditors to such exemption. *In re Bohman*, (S. D. Ga. 1915) 224 Fed. 287.

It has been held that the expense of opposing an offer of composition is not an "actual and necessary cost of preserving the estate," within this section. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

The services of counsel in advising the bankrupt regarding its business during the period between the filing of the petition and the adjudication of bankruptcy, including legal services in opposing attachment and lien proceedings, are not within this section. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Effect of composition agreement.—In case of a composition the bankrupt must first pay the expenses of those who are entitled to payment out of the estate, including the allowance to the attorney for petitioning creditors, before the composition is approved, and, if necessary, the amount agreed upon by the bankrupt for his attorneys will be used to meet the expenses of the composition and of the bankruptcy proceedings. *In re Miller*, (E. D. N. Y. 1917) 243 Fed. 242.

1912 Supp., p. 774, sec. 64b (4).

Application.—This section only relates to the distribution of assets coming into the hands of the trustee and does not apply to moneys transferred before the bankruptcy occurred. *Riverside Contracting*

Co. v. New York, (1916) 218 N. Y. 596, 113 N. E. 564, Ann. Cas. 1918C 1075.

Relation of master and servant contemplated.—To be entitled to priority as wages of workmen, clerk or servant the relation must be such as arises from the relation of master and servant. *In re Footville Condensed Milk Co.*, (W. D. Wis. 1916) 237 Fed. 136.

The word *servant* does not include all cases where the formal relation of master and servant exists. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 231 Fed. 251.

It means a restricted class of subordinate helpers who work for wages, but who are not salesmen, workmen, or clerks. *Keyes v. Davie*, (C. C. A. 9th Cir. 1916) 231 Fed. 688, 145 C. C. A. 574.

Priority in allowance of wages under Ohio Code.—See *Emerson v. Castor*, (C. C. A. 6th Cir. 1916) 236 Fed. 29, 149 C. C. A. 239.

The fact that the claimant's compensation was more than \$1,500 per year does not of itself disentitle him to priority under this section. *In re Schultz*, (D. C. Mass. 1916) 235 Fed. 907.

Who may claim wages.—*Clerks.*—Where under the laws of a state the owners of rented buildings have so-called "preferential" lien, and clerks, accountants, and laborers have a first lien only subordinate to the landlord's lien in the case of farm hands clerks are properly given priority. *In re Woulfe*, (C. C. A. 5th Cir. 1917) 239 Fed. 128, 152 C. C. A. 170.

President of corporation.—"It is clear on the authorities that the president of a corporation as such is not entitled to wages as a preferred claim under the bankruptcy act." *In re Eagle Ice, etc., Co.*, (E. D. Pa. 1917) 241 Fed. 393. But see *In re Capital Paint Co.*, (N. D. Cal. 1916) 239 Fed. 424.

A treasurer and director is not entitled to priority under this section. *In re Boston French Range Co.*, (D. C. Mass. 1916) 235 Fed. 916.

The secretary, general manager and superintendent of a bankrupt corporation is not a "laborer," as that word is used in state priority statute. *Wintermote v. McLafferty*, (C. C. A. 9th Cir. 1916) 233 Fed. 95, 147 C. C. A. 165.

General manager of business.—"Servant" does not include the general manager of a business. *Keyes v. Davie*, (C. C. A. 9th Cir. 1916) 231 Fed. 688, 145 C. C. A. 574.

A mining engineer who is paid \$4,000 per annum to advise and assist the superintendent in developing and operating the mine is not a "workman, clerk or servant" and his earnings are not wages entitled to priority. *In re Gay*, (D. C. Mass. 1916) 233 Fed. 604.

An actress commanding \$5,000 for a four weeks' engagement is not a workman or

servant within the meaning of this provision. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 231 Fed. 251.

Wife of bankrupt.—Where the statutes of a state do not deny the right of the wife to contract with the husband for services rendered outside of her marital duties, a claim by her for wages for such services has been held to have priority. *In re Davidson*, (M. D. Ala. 1916) 233 Fed. 462.

Assignee of wage claim.—A person who has cashed checks given by the bankrupt to his workmen is an assignee and stands in the shoes of his assignor and is entitled to priority in payment. *In re Stultz*, (S. D. N. Y. 1915) 226 Fed. 989.

Effect of reducing claim to judgment.—In the case of *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819, it is held, although it is said the question seems to be unsettled, that the priority given to claims for wages by this section is not lost by taking judgment on the claim before the institution of bankruptcy proceedings.

Order of priority—Preference or lien under state statutes.—In *Lott v. Salsbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337, it was held that a lien given a landlord for rent is entitled to priority over the claims of clerks.

1912 Supp., p. 777, sec. 64b (5).

Priorities accorded by state or federal laws.—Claims entitled to priority under state laws will also be entitled to priority in bankruptcy proceedings. *Louisville Woolen Mills v. Johnson*, (C. C. A. 6th Cir. 1916) 228 Fed. 606, 143 C. C. A. 128.

If a petitioner is entitled to "priority" by the laws of Porto Rico in respect of his debt, in the sense in which this section uses the term, the debt is within the provisions of this section. *In re Vidal*, (C. C. A. 1st Cir. 1916) 233 Fed. 733, 147 C. C. A. 499. See *Gandia v. Cadierno*, (C. C. A. 1st Cir. 1916) 233 Fed. 739, 147 C. C. A. 505.

Order of priority.—"The bankruptcy law does not undertake to displace or invalidate bona fide liens upon the property of the bankrupt. It declares null and void liens that were given or accepted in fraud of the bankruptcy law, but all liens given or accepted in good faith and not in contemplation of bankruptcy nor in fraud of the bankruptcy act are entitled to recognition and payment in accordance with the law creating them." *Lott v. Salsbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337.

Landlord's right to priority.—A priority accorded the landlord by state laws will be recognized and enforced in the bankruptcy court. *In re W. R. Kuhn Co.*, (C. C. A. 3d Cir. 1915) 225 Fed. 13, 140 C. C. A. 473; *Hattiesburg Bank v. Carter*, (C. C. A. 5th Cir. 1916) 232 Fed. 127,

146 C. C. A. 319; *In re Braus*, (S. D. N. Y. 1916) 233 Fed. 835; *In re Gerrow*, (E. D. Pa. 1916) 233 Fed. 845.

Where the statutes of a state give the landlord a specific lien upon any goods on the leased premises for rent it has been held that the claim of the landlord for the rent of the premises in which the bankrupt was conducting his business is superior to and entitled to priority over the claims of clerks for salary for the three months immediately preceding bankruptcy. *Lott v. Salsbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337.

The priority of liens as between mortgage lienholders and a landlord is determined by state laws. *Pretorius v. Anderson*, (C. C. A. 5th Cir. 1916) 236 Fed. 723, 150 C. C. A. 55.

If the landlord is not entitled to priority under the state law he is not entitled to priority under the bankrupt law. *In re Spies-Alper Co.*, (D. C. N. J. 1916) 231 Fed. 535.

Priority provided for decedent's estate.—Where by the laws of a state a direction by a testator in his will that his debts be paid serves to charge such debts on his realty, the fact that some of the decedent's creditors did business with the bankrupt executrix of his estate and received payment on account thereof, as well as on their claims against testator, and that some of the payments were made by her as executrix, does not change the status of these creditors with respect to the priority of their claims against decedent's property. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Equitable rights.—If a petitioner claims to have a lien upon the funds in the hands of the trustees superior to the right of any other creditors to have their claims paid out of such funds, it is entitled in a proper proceeding to have such contention heard and determined before payment of such claim is actually made. *In re O'Gara Coal Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 883, 149 C. C. A. 195.

Misappropriation by bankrupt.—Where the trustee contends that the fact that appellee filed an unsecured claim for the amount in controversy, which was allowed and on which it received a dividend, without asserting any right of priority, operates as an estoppel against its now asserting any such priority, it has been held that the estoppel cannot be sustained in the absence of a showing in the record that the trustee was in any way induced to change his position by the act of appellee, or that he has paid out funds for costs or dividends that he would have retained for the satisfaction of the appellee's prior claim, had he been advised it was to be asserted, or that the trustee was injured by delay in asserting the alleged priority of appellee's claim in the way of making his proof or otherwise.

Wuerpel v. Commercial Germania Trust, etc., Bank, (C. C. A. 5th Cir. 1917) 238 Fed. 269, 151 C. C. A. 285.

1912 Supp., p. 781, sec. 65a.

Effect of oral promise by stockholder to pay creditor.—The fact that a stockholder who is also a creditor of a bankrupt corporation orally promised that the indebtedness to another creditor should be paid does not create any estoppel on the part of the stockholder from receiving dividends on an equality with such creditor. *Moise v. Scheibel*, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

1912 Supp., p. 785, sec. 67c.

Attachment liens acquired within the period are discharged. *In re Gilsonite Mines Co.*, (M. D. Pa. 1916) 236 Fed. 1015.

1912 Supp., p. 786, sec. 67d.

"To the extent of such present consideration only."—The interest which a present cash consideration bears is a part of the present consideration. *In re Mobile Chair Mfg. Co.*, (S. D. Ala. 1917) 245 Fed. 211.

Valid liens remain undisturbed.—See to same effect as original annotation, *Browning v. Gray*, (1917) 137 Tenn. 70, 191 S. W. 525; *Sullivan v. Myer*, (1917) 137 Tenn. 412, 193 S. W. 124.

The state law governs.—*In re Roberts*, (N. D. Ga. 1915) 227 Fed. 177.

Chattel mortgages.—Validity of such mortgages is determined by state laws. *In re Roberts*, (N. D. Ga. 1915) 227 Fed. 177.

Mechanics' and kindred liens.—A mechanic's lien if ineffective under state liens will not be given priority. *Varnier v. New Hampshire Sav. Bank*, (1916) 240 U. S. 617, 36 S. Ct. 409, 60 U. S. (L. ed.) 828.

Mechanics' liens are not liens created by or obtained in or pursuant to any suit or proceeding at law or in equity. Nor are they liens obtained through legal proceedings. They are liens created by statute, and by the act of the lienholders pursuant to the statute, without suits or legal proceedings, and paragraphs 67c-67f of the Bankruptcy Law cited are inapplicable to them. *Kemp Lumber Co. v. Howard*, (C. C. A. 8th Cir. 1916) 237 Fed. 574, 150 C. C. A. 456.

Materialmen's liens.—In *Louisville Woolen Mills v. Tapp*, (C. C. A. 6th Cir. 1917) 239 Fed. 463, 152 C. C. A. 341, a materialman's lien was held under the state statutes to be superior to the landlord's lien.

Landlord's liens.—Liens given a landlord under the laws of a state will be recognized and enforced in bankruptcy.

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In re Mock, (S. D. Miss. 1915) 228 Fed. 94; *Dellinger v. Waite-Thresher Co.*, (C. C. A. 1st Cir. 1915) 228 Fed. 506, 143 C. C. A. 88; *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318; *Fudickar v. Glenn*, (C. C. A. 5th Cir. 1917) 237 Fed. 808, 151 C. C. A. 50.

Equitable liens.—An equitable lien will be recognized and enforced. *Johnson v. Root Mfg. Co.*, (1916) 241 U. S. 160, 36 S. Ct. 520, 60 U. S. (L. ed.) 934.

Pledges.—The rights of a pledgee are not affected by adjudication. *In re Progressive Wall Paper Corp.*, (N. D. N. Y. 1915) 224 Fed. 143; *Dodge v. Harris*, (C. C. A. 8th Cir. 1915) 224 Fed. 434, 140 C. C. A. 128.

1912 Supp., p. 792, sec. 67e.

Distinction between remedies under sections 60b and 67e.—"The provisions of sections 60b and 67e, *supra*, disclose a wide difference as to what is required to show liability. To establish a liability under the former section no actual fraud need be shown. The section merely condemns a transfer by bankrupt within four months for the purpose of creating a preference, providing the party receiving the transfer has reasonable cause to believe that a preference was intended. The legal remedy is entirely adequate, and no relief is offered in equity that the law does not afford. To establish a liability under section 67e actual fraud must be shown, and suits under that provision are peculiarly within the cognizance of and should be entertained by the equity court." *Simpson v. Western Hardware, etc., Co.*, (W. D. Wash. 1915) 227 Fed. 304.

Intent to hinder, delay or defraud essential.—See to the same effect as original annotation, *Johnson v. Barrett*, (N. D. Ga. 1916) 237 Fed. 112.

Mortgage given before not recorded until within four months.—Where a complaint in action to set aside a conveyance alleges that there was no change of possession of the property, but that it remained in the open and notorious possession of the grantor, that the deed was withheld from record for the purpose of enabling the grantor to obtain credit upon his reputed and apparent ownership, and that such credit was obtained, it has been held that if these allegations are established the plaintiff trustee is entitled to the relief he seeks. *Manders v. Wilson*, (C. C. A. 9th Cir. 1916) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052.

A part payment on a debt barred by statute of limitations recreates the obligation and the promise thereby arising falls within the term "incumbrance" as used in this section. *In re Salmon*, (S. D. N. Y. 1916) 239 Fed. 413.

Bona fide purchasers protected.—See to the same effect as original annotation,

Grandison v. Robertson, (C. C. A. 2d Cir. 1916) 231 Fed. 785, 145 C. C. A. 605; *Chambers v. Continental Trust Co.*, (S. D. Ga. 1916) 235 Fed. 441.

In an action to set aside a conveyance this section does not require proof of insolvency, as is the case with suits to recover voidable preferences, or to invalidate transfers held null by the laws of a state. *Senft v. Lewis*, (C. C. A. 2d Cir. 1917) 239 Fed. 116, 152 C. C. A. 158.

Extent of relief.—Where relief is sought by the trustee under this section it may extend to the extinguishment of the lien created, as having been so created for the purpose of hindering, delaying and defrauding creditors. *Johnstone v. Babb*, (C. C. A. 4th Cir. 1917) 240 Fed. 668, 153 C. C. A. 466.

1912 Supp., p. 797, sec. 67f.

I. Annulment of liens generally.

III. Judgment liens.

IV. Attachment and garnishment liens.

I. ANNULMENT OF LIENS GENERALLY (p. 798)

Purpose of statute.—It was the intention of Congress and the legal effect of this section to grant to the courts of bankruptcy the power to effect an avoidance in summary proceedings of liens of the character there specified, obtained against persons who were insolvent at the respective times the liens were obtained, and those only, and that the insolvency of the person at the time the lien is acquired is an indispensable condition of the existence and of the exercise of the power. *Stone-Ordean-Wells Co. v. Mark*, (C. C. A. 8th Cir. 1915) 227 Fed. 975, 142 C. C. A. 433.

This section relates merely to levies, judgments, attachments, and liens which are acquired through legal proceedings, and does not affect contractual liens or quasi-contractual lines or rights, except perhaps as to matters of procedure. *Gray v. Arnot*, (1915) 31 N. D. 461, 154 N. W. 268.

Under this section those liens only are excepted which are established against a debtor not insolvent at their date. *Mowbray Pearson Co. v. Pershall*, (1916) 92 Wash. 516, 159 Pac. 682.

Landlord's lien.—In *Bird v. Richmond*, (C. C. A. 4th Cir. 1917) 240 Fed. 545, 153 C. C. A. 349, it is held that the landlord's lien is not a lien created through legal proceedings, though perfected by levying a distress warrant. See also *In re Mossler Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 262, 152 C. C. A. 250.

Where under the state law a vendor's lien is created as of the date of the contract of sale, a decree in a proceeding to enforce such lien, though rendered within the four months' period, is not subject

to the provisions of this section. *Farrell v. Wysong*, (C. C. A. 8th Cir. 1917) 246 Fed. 281.

III. JUDGMENT LIENS (p. 800)

Judgment liens.—Where there is no order for the preservation of the lien of the judgment for the benefit of the estate, such lien is by this section rendered null and void. *Finney v. Knapp Co.*, (1916) 145 Ga. 400, 89 S. E. 413. See also *Dreyer v. Kicklighter*, (S. D. Ga. 1916) 228 Fed. 744.

In *Harvard v. Davis*, (1916) 145 Ga. 580, 89 S. E. 740, where a borrower of money executes a deed to secure the debt and receives a bond for title as provided in Ga. Civ. Code 1910, § 3306, and suit is instituted for a general judgment and to subject the property to payment of the debt, as provided in Ga. Civ. Code 1910, § 6037, and within four months next after rendition of the judgment, but more than four months after the debt and record of the security deed, the debtor is adjudged a bankrupt upon his voluntary petition in bankruptcy, it was held that the judgment was not invalid under this section.

Execution liens acquired within four months are invalid. *In re Fitzhugh Hall Amusement Co.*, (C. C. A. 2d Cir. 1916) 230 Fed. 811, 145 C. C. A. 121.

An execution lien which has become dormant may be revived by direction to the sheriff to proceed with the sale, and where this is done it becomes prior to any liens acquired subsequent thereto. The revival is not a revival of the lien but of its priority. *In re Zeis*, (C. C. A. 2d Cir. 1917) 245 Fed. 737, 158 C. C. A. 139.

Where judgment liens are void under this section it follows that levies made of executions issued on the judgments and sales made by virtue thereof are also void. *Dreyer v. Kicklighter*, (S. D. Ga. 1916) 228 Fed. 744.

IV. ATTACHMENT AND GARNISHMENT LIENS (p. 801)

Attachment and garnishment liens.—As to a lien created by attachment, see *Yumet v. Delgado*, (C. C. A. 1st Cir. 1917) 243 Fed. 519, 156 C. C. A. 217.

Attachment liens within the four months are rendered void. *In re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275.

1912 Supp., p. 805, sec. 68a.

Mutual debts and credits may be set off. *Clifford v. Oak Valley Mills Co.*, (D. C. Mass. 1916) 229 Fed. 851; *Roger v. J. B. Levert Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 737, 150 C. C. A. 491.

The credits do not adjust themselves automatically. *In re American Paper Co.*, (C. C. A. 3d Cir. 1917) 246 Fed. 790.

Any set-off or counterclaim must come within the provisions of this section. *In re Neaderthal*, (C. C. A. 2d Cir. 1915) 225 Fed. 38, 140 C. C. A. 364, so holding where a creditor of a bankrupt firm owed a debt to one of the partners.

Where a payment has been made to a creditor under such circumstances as to constitute it an illegal preference, he is not entitled to have a debt owing to him from the bankrupt set off against the payment so made. *Rotan Grocery Co. v. West*, (C. C. A. 5th Cir. 1917) 246 Fed. 685, 158 C. C. A. 641.

Set-off between bank and depositor.—A bank which is a creditor of one who has a sum on deposit to his credit, and which has knowledge of the depositor's insolvency, is entitled to apply the same on its claim as a set-off prior to bankruptcy proceedings. *Wichita Fourth Nat. Bank v. Smith*, (C. C. A. 8th Cir. 1916) 240 Fed. 19, 153 C. C. A. 55; *American Bank v. Johnson*, (C. C. A. 9th Cir. 1917) 245 Fed. 312, 157 C. C. A. 504.

Whether the bank charges off the deposit of its customer and applies it on the indebtedness which it holds against the customer, or whether it draws a check in the name of the customer covering his deposit and applies it as a credit on the indebtedness, or whether it does neither of these things, but appeals to the law to do the same thing in effect, makes no difference as a legal proposition. *Wilson v. Citizens' Trust Co.*, (S. D. Ga. 1916) 233 Fed. 697.

As against a primary debt due to a bank on a note which is provable in bankruptcy, the bank has the right to use deposits and also any obligations or securities which are in its hands for future collection, and without a specific agreement to apply them for the purpose of third parties. *In re Friedman*, (E. D. N. Y. 1917) 241 Fed. 603.

Set-off of deposit not reference.—See to same effect as original annotation, *German-American State Bank v. Larimer*, (C. C. A. 8th Cir. 1916) 235 Fed. 501, 149 C. C. A. 47; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969; *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

Set-off of judgment against interest on mortgage.—A judgment purchased by the mortgagor may be set off against the interest due on the mortgage where it appears that the judgment was not purchased with a view to a set-off nor after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that the bankrupt was insolvent or had committed an act of bankruptcy. *In re Colwell Lead Co.*, (S. D. N. Y. 1917) 241 Fed. 922.

Unpaid stock subscriptions due an insolvent corporation are not subjects of set-off against ordinary claims held by

the subscribers against the corporation. *In re La Jolla Lumber, etc., Co.*, (S. D. Cal. 1917) 243 Fed. 1004.

1912 Supp., p. 811, sec. 70a.

II. Nature of trustee's title.

III. Time when title passes.

V. Burdensome property.

VI. Exempt property.

VII. Reclamation proceedings.

II. NATURE OF TRUSTEE'S TITLE

(p. 811)

Trustee takes bankrupt's title.—The trustee takes such title as the bankrupt had. *In re Place*, (N. D. N. Y. 1915) 224 Fed. 778; *In re Reading Hat Mfg. Co.*, (E. D. Pa. 1915) 224 Fed. 786; *Shaffer v. Federal Cement Co.*, (E. D. Pa. 1915) 225 Fed. 893; *In re Scott*, (C. C. A. 7th Cir. 1915) 226 Fed. 201, 141 C. C. A. 653; *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771; *In re Hawley Down-Draft Furnace Co.*, (E. D. Pa. 1916) 233 Fed. 451; *Miller Rubber Co. v. Citizens' Trust, etc., Bank*, (C. C. A. 9th Cir. 1916) 233 Fed. 488, 147 C. C. A. 374; *In re Louis Neuburger*, (S. D. N. Y. 1916) 233 Fed. 701; *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535; *In re Hamil*, (W. D. N. Y. 1916) 236 Fed. 292; *In re Wettengel*, (C. C. A. 3d Cir. 1917) 238 Fed. 798, 151 C. C. A. 648; *Memphis First Nat. Bank v. Towner*, (C. C. A. 6th Cir. 1917) 239 Fed. 433, 152 C. C. A. 311; *In re Louis Neuburger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633; *In re Friedman*, (E. D. N. Y. 1917) 241 Fed. 603; *In re Brantman*, (C. C. A. 2d Cir. 1917) 244 Fed. 101, 156 C. C. A. 529; *Citizens' Coal, etc., Co. v. Custard*, (C. C. A. 4th Cir. 1917) 244 Fed. 425, 157 C. C. A. 51.

The trustee of a bankrupt succeeds to the bankrupt's title to corporate stock and has the bankrupt's rights and remedies as respects dividends which have been declared or which ought to have been declared. *In re Brantman*, (C. C. A. 2d Cir. 1917) 244 Fed. 101, 156 C. C. A. 529.

Title of trustee is subject to existing equities.—*In re Reading Hat Mfg. Co.*, (E. D. Pa. 1915) 224 Fed. 786; *Charles Roesch, etc., Co. v. Mumford*, (C. C. A. 3d Cir. 1916) 230 Fed. 56, 144 C. C. A. 354; *In re Wellmade Gas Mantle Co.*, (D. C. Mass. 1916) 230 Fed. 502; *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173; *Bransford v. Regal Shoe Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 67, 150 C. C. A. 269; *In re Imperial Textile Co.*, (N. D. N. Y. 1917) 239 Fed. 775; *In re Shelly*, (C. C. A. 3d Cir. 1917) 242 Fed. 251, 155 C. C. A. 91; *In re Terrell*, (C. C. A. 8th Cir. 1917) 246 Fed. 743.

Liens invalid as to creditors.—"It was clearly the intention of Congress in adopting the amendment of 1910 to paragraph

47, cl. A, of the Bankruptcy Act, that thereafter the trustee should not stand in the shoes of the bankrupt with regard to unrecorded liens depending for their validity upon registration, and that, as to the general creditors, such liens should be void." *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

III. TIME WHEN TITLE PASSES (p. 813)

Effect of commencement of proceedings.

—The title of the trustee in bankruptcy is fixed as of the time of filing the petition. *Arnold v. Horrigan*, (C. C. A. 6th Cir. 1916) 238 Fed. 39, 151 C. C. A. 115; *In re Continental Coal Corp.*, (C. C. A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

Property in custodia legis.—From the time of the filing of the petition the property of the bankrupt is in custodia legis. *Friedlander's Petition*, (C. C. A. 1st Cir. 1916) 233 Fed. 250, 147 C. C. A. 256; *Fairbanks Steam Shovel Co. v. Wills*, (1916) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Effect of adjudication.—Title passes to trustee as of date of adjudication. *In re Progressive Wall Paper Corp.*, (C. C. A. 2d Cir. 1916) 229 Fed. 489, 143 C. C. A. 557, L. R. A. 1916E 563; *In re Louis Neuburger*, (S. D. N. Y. 1916) 233 Fed. 701.

The rights of a trustee in bankruptcy in the debtor's property as of the date of adjudication are at least as great as those of an assignee in possession. *In re Howe*, (D. C. Mass. 1916) 235 Fed. 908.

V. BURDENSOME PROPERTY (p. 816)

Acceptance optional with trustee—

Generally.—"It is undisputed that a trustee in bankruptcy is under no obligation to accept a patent license burdened with executory obligations. It is, in this respect, like other property rights belonging to the bankrupt, whether resulting from a grant or conveyance coupled with executory obligations, like a lease of real or personal property, or from a purely executory agreement." *In re Wisconsin Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 281, 148 C. C. A. 183.

VI. EXEMPT PROPERTY (p. 817)

Title remains in bankrupt.—Title to exempt property remains in bankrupt and does not vest in trustee. *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533; *In re French*, (N. D. N. Y. 1916) 231 Fed. 255; *In re Vonhee*, (W. D. Wash. 1916) 238 Fed. 422; *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621; *Norwood v. Watson*, (C. C. A. 4th Cir. 1917) 242 Fed. 885, 155 C. C. A. 473; *Watters v. Hedgpeth*, (1916) 172 N. C. 310, 90 S. E. 314.

While it is true that title to exempt property does not pass to the trustee yet it is said that he has what may be termed a defeasible title and that he has temporary dominion over such property until

the exemptions are made after which the title of the bankrupt becomes superior to that of the trustee and absolute. *In re Vonhee*, (W. D. Wash. 1916) 238 Fed. 422. See also *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621.

Of "exempt property a certain amount of control, but not title, passes to the bankrupt's trustee, only for orderly administration and to set it aside to the bankrupt. . . . If there are creditors against whom the exemption fails, it is by reason of state law, and they are left to work out their remedy in the state court. The property is still set aside as exempt by the trustee, since he has not title; and as of the bankrupt's estate it is not administered in the bankruptcy court." *In re Auge*, (D. C. Mont. 1916) 238 Fed. 620.

Homesteads.—Federal homestead lands.

—Title to such lands passes to the trustee where under state law they are only exempt as to debts prior to patent and there are debts subsequent thereto. *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621.

VII. RECLAMATION PROCEEDINGS (p. 818)

Right to reclaim.—The owner, other than the bankrupt, of property in the possession of the trustee may recover the same in some appropriate proceeding. *In re Midland Motor Co.*, (C. C. A. 7th Cir. 1915) 224 Fed. 368, 140 C. C. A. 54; *In re Pierson*, (S. D. N. Y. 1915) 225 Fed. 889; *In re National Home, etc., Supply Co.*, (E. D. Mich. 1915) 226 Fed. 840; *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 120, 142 C. C. A. 526; *In re Bondurant Hardware Co.*, (N. D. Ga. 1916) 231 Fed. 247; *In re Thomas*, (S. D. Ga. 1916) 231 Fed. 513; *McElwain-Barton Shoe Co. v. Bassett*, (C. C. A. 8th Cir. 1916) 231 Fed. 889, 146 C. C. A. 85; *In re Inter-ocean Transp. Co.*, (C. C. A. 2d Cir. 1916) 234 Fed. 863, 148 C. C. A. 461; *Mitchell Wagon Co. v. Poole*, (C. C. A. 6th Cir. 1916) 235 Fed. 817, 149 C. C. A. 129; *In re Wright, etc., Drug Co.*, (W. D. Ga. 1916) 237 Fed. 411; *In re Kaplan*, (C. C. A. 3d Cir. 1917) 241 Fed. 459, 154 C. C. A. 291; *In re Collins*, (M. D. Ala. 1917) 242 Fed. 975; *In re Sutton*, (E. D. Mich. 1917) 244 Fed. 872; *Jones v. H. M. Hobbie Grocery Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 431, 158 C. C. A. 495; *In re Aboudara*, (N. D. Cal. 1917) 246 Fed. 469.

Where a client furnishes a broker with funds on the agreement by the latter to buy certain shares of stock for him and apply the payment made to the purchase, and he does not buy the stock, but has the money in his possession when he goes into bankruptcy, no right to retain such money was created by his going into bankruptcy, and consequently no right passed to the broker's trustee. *In re Wettengel*, (C. C. A. 3d Cir. 1917) 238 Fed. 798, 151 C. C. A. 648.

Where property claimed has been taken and used by the trustee and the claimant proves his right thereto he may be allowed the fair value of the property. *Smith Wallace Shoe Co. v. Ternes*, (C. C. A. 8th Cir. 1916) 235 Fed. 282, 148 C. C. A. 642.

The fact that a bankrupt bank converted and dissipated the proceeds of a note collection does not operate to give the owner of the note a lien upon or right to priority of payment from the general assets of the bankrupt, to the prejudice of its general creditors. *Macy v. Roedenbeck*, (C. C. A. 8th Cir. 1915) 227 Fed. 346, 142 C. C. A. 42, L. R. A. 1916C 12.

Where partnership assets are used by one partner to pay his individual debt without the consent of his copartners, the nonconsenting partner has the right to recover the property, and in case of bankruptcy, the trustee has the same right. A trustee in bankruptcy becomes vested with all the property rights of the bankrupt, and he is empowered to recover any property which the bankrupt could recover in order that it may be applied to the payment of his debts. *Ryan v. Cavanagh*, (S. D. Ia. 1916) 238 Fed. 604.

The burden of proof rests on the claimant.—*Schroth v. Monarch Fence Co.*, (C. C. A. 6th Cir. 1916) 229 Fed. 549, 144 C. C. A. 9; *In re Hunter-Rand Co.*, (E. D. N. C. 1917) 241 Fed. 175.

Reclamation precluded by act of claimant.—Filing and proving claim is binding as an election. *In re Kaplan*, (M. D. Pa. 1916) 236 Fed. 260.

1912 Supp., p. 823, sec. 70a (5).

- II. Interests in real property, etc.
- III. Pledges.
- IV. Conditional sales.
- V. Trust funds and deposits.
- VII. Subscriptions for stock.
- VIII. Membership in stock exchange.
- IX. Contractual interests and obligations.

II. INTERESTS IN REAL PROPERTY, ETC. (p. 824)

A desert entry under the laws of the United States is property which can be transferred within the meaning of this section, although final proof has not yet been made. *In re Evans*, (D. C. Idaho 1916) 235 Fed. 956.

Vested remainder passes to trustee.—*In re Dorgan*, (S. D. Ia. 1916) 237 Fed. 507.

Encumbered property.—This section does not mean that the status of the mortgagee is exactly that of the mortgagor for all purposes. In some particulars his rights are greater. The mortgagee, however, is the virtual owner of the land and entitled to the rents. *In re Dooner*, (D. C. N. J. 1917) 243 Fed. 984.

III. PLEDGES (p. 826)

Where life insurance policies have been pledged although they pass to the trustee they are subject to the indebtedness for which they were pledged and it is proper that the trustee in bankruptcy be directed on the delivery to him by the claimants of the two policies for that purpose, to receive from the bankrupt or collect from the insurance company such surrender value and apply the proceeds to the payment of the indebtedness of the bankrupt to them. *In re Baird*, (D. C. Del. 1917) 245 Fed. 504.

IV. CONDITIONAL SALES (p. 828)

Goods sold for purpose of resale.—A nominal understanding between seller and purchaser as to payment and title not intended to be acted on unless the bankrupt gets into financial difficulties has been held fraudulent as to creditors and invalid as against the trustee. *In re Aronson*, (D. C. Mass. 1917) 245 Fed. 207.

In the following cases title goods sold on consignment contract was held to vest in trustee. *In re Reeves*, (N. D. N. Y. 1915) 227 Fed. 711; *In re Stoughton Wagon Co.*, (C. C. A. 6th Cir. 1916) 231 Fed. 676, 145 C. C. A. 562; *Walter A. Wood Mowing, etc., Mach. Co. v. Croll*, (C. C. A. 6th Cir. 1916) 231 Fed. 679, 145 C. C. A. 565.

If the sale is valid and binding in all respects the vendor may exercise the right to reclaim the property. *In re I. S. Remson Mfg. Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 594, 146 C. C. A. 552; *In re Hamil*, (W. D. N. Y. 1916) 236 Fed. 292; *Ewart v. Squire*, (C. C. A. 4th Cir. 1916) 239 Fed. 34, 152 C. C. A. 84; *Shook v. Levi*, (C. C. A. 9th Cir. 1917) 240 Fed. 121, 153 C. C. A. 157.

The burden of proving that a sale was conditional rests on the one affirming it. *In re Farmers' Dairy Ass'n*, (S. D. Cal. 1916) 234 Fed. 118; *Shook v. Levi*, (C. C. A. 9th Cir. 1917) 240 Fed. 121, 153 C. C. A. 157.

V. TRUST FUNDS AND DEPOSITS (p. 830)

Where bankrupt is beneficiary.—The interest of a bankrupt in a trust fund which was capable of transfer at institution of proceedings passes to trustee. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Where a testator bequeathed a certain sum in trust to pay the income to his son, during his life, with a remainder over to others, subject to the "wish . . . that . . . my said son shall have the principal of said trust fund whenever he shall become financially solvent and able to pay all his just debts and liabilities from resources other than the principal of this trust fund," it was held that on payment of the sum to the son after the latter's

discharge in bankruptcy the trustee acquired no right thereto. *Hull v. Farmers' Loan, etc., Co.*, (1917) 245 U. S. 312, 38 S. Ct. 103, 62 U. S. (L. ed.) —.

The equitable life interest of the beneficiary in a trust created by a bequest of a fund to a trustee to pay the entire net income thereof to the beneficiary for life "free from the interference or control of her creditors" does not pass to her trustee in bankruptcy, where the local law treats such restrictions against interference or control by creditors as limiting the character of the equitable property, and inherent in it. *Eaton v. Boston Safe Deposit, etc., Co.*, (1916) 240 U. S. 427, 36 S. Ct. 391, 60 U. S. (L. ed.) 723.

Burden of proof.—Where a company in whose store complainant conducted a department agreed to keep the proceeds of the complainant's sales "in trust" for the latter's benefit, it has been held that the burden of proof is upon the complainant to clearly trace the proceeds of said sales into "some specific fund or property" in the hands of the trustee in bankruptcy. *In re A. D. Matthews' Sons*, (C. C. A. 2d Cir. 1916) 238 Fed. 785, 151 C. C. A. 635.

VII. SUBSCRIPTIONS FOR STOCK (p. 832)

Trustee may recover stock subscriptions.—*Kelley v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

Where the state laws and decisions do not give a right of action to recover from stockholders who have not paid in full for their stock, no right to recover vests in the trustee. *In re Huffman-Salvar Roofing Paint Co.*, (N. D. Ala. 1916) 234 Fed. 798; *Courtney v. Croxton*, (C. C. A. 6th Cir. 1917) 239 Fed. 247, 152 C. C. A. 235.

The claims of stockholders who have loaned money to the corporation will not, where there is no suggestion that they are not financially responsible, be postponed until the collection of assessments on unpaid stock subscriptions has been had and other creditors paid in full. *Courtney v. Croxton*, (C. C. A. 6th Cir. 1917) 239 Fed. 247, 152 C. C. A. 235.

Bona fide purchaser of voting trust certificates not the original subscribers, who have purchased in the open market have a right to rely on statements in the certificates that the stock is fully paid and are not liable for an unpaid balance thereon. *Clark v. Johnson*, (C. C. A. 8th Cir. 1917) 245 Fed. 442, 157 C. C. A. 604.

When the assessment on unpaid stock subscriptions is to be ascertained no dividends should be paid to a stockholder of such stock until the assessment is fully paid, but in case it is paid then the claim should be allowed and share equally in the payment of dividends with those of the same class. *Moise v. Scheibel*, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

The amount of the assessment to be levied upon stock which has not been fully paid can only be determined in a proceeding brought by the trustee. *Moise v. Scheibel*, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

Jurisdiction.—A suit to enforce the collection of unpaid stock subscriptions is properly brought on the equity side of the court. *Kelley v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

The action of the bankruptcy court is conclusive, so far as the necessity of an assessment against any unpaid stock that may exist is concerned, and also as to the rate of the assessment, but beyond these facts the stockholder is not concluded by the action of the bankruptcy court. He is entitled, in the action brought by the trustee in bankruptcy to collect this assessment, to show that the stock upon which he has been assessed was not assessable because it was fully paid up when he acquired it, or if it were not, that that fact was not known to him when he purchased it, or any other defense which he may have upon the merits. *Enright v. Heckscher*, (C. C. A. 2d Cir. 1917) 240 Fed. 863, 153 C. C. A. 549.

VIII. MEMBERSHIP IN STOCK EXCHANGE (p. 832)

Membership in a board of trade is property which passes to the trustee. *Board of Trade v. Weston*, (C. C. A. 7th Cir. 1917) 243 Fed. 332, 156 C. C. A. 112.

IX. CONTRACTUAL INTERESTS AND OBLIGATIONS (p. 833)

"Creditors participating in the distribution."—Creditors in respect to whose claims the court has ordered that the claim of each "be wholly withdrawn from said bankruptcy proceeding and expunged from the list of claims upon the record in this case and excluded from participating in the distribution of the estate . . . of the bankrupt," do not come within the meaning of this clause. *Andrews v. Nix*, (1918) 246 U. S. 273, 38 S. Ct. 249, 62 U. S. (L. ed.) —.

When property traceable.—"Cash is never traced by showing that it went into the general estate." *In re A. D. Matthews' Sons*, (C. C. A. 2d Cir. 1916) 238 Fed. 785, 151 C. C. A. 635.

Contract invalid as to lien creditors.—Seller has no remedy where contract invalid because not properly executed or recorded. *In re M. L. B. Sturkey Co.*, (W. D. S. C. 1915) 224 Fed. 251; *In re Kruse*, (N. D. Ia. 1916) 234 Fed. 470; *Citizens' Coal, etc., Co. v. Custard*, (C. C. A. 4th Cir. 1917) 244 Fed. 425, 157 C. C. A. 51.

Fire insurance policy.—Right of trustee to proceeds of fire insurance policy as against mortgagees, see *In re Stucky Trucking, etc., Co.*, (D. C. N. J. 1917) 240 Fed. 427.

1912 Supp., p. 835, sec. 70a (5).

[Policy of insurance.]

An industrial policy payable to the executors or administrators only at the discretion of the insurer does not pass to the trustee. *In re Gannon*, (S. D. N. Y. 1917) 241 Fed. 733.

Policies not payable to bankrupt or his estate or personal representatives.—This section applies only when an insurance policy has a cash surrender value, payable to the bankrupt, his estate, or personal representatives, and a policy payable to the wife, in which is reserved no right to change the beneficiary, does not pass to the trustee. *In re Majors*, (D. C. Ore. 1917) 241 Fed. 538; *In re Fetterman*, (N. D. Ohio 1917) 243 Fed. 975.

Exempt policies do not pass.—*In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339; *In re Cohen*, (S. D. Ga. 1916) 230 Fed. 733; *Frederick v. Metropolitan Life Ins. Co.*, (W. D. Pa. 1916) 235 Fed. 639; *In re Rosenberg-Oldstein Co.*, (E. D. La. 1916) 236 Fed. 812; *In re Fetterman*, (N. D. Ohio 1917) 243 Fed. 975.

When the insured has died, and the beneficiary has furnished due proof and made timely demand for the contracted sum, the company, "without notice of any character as to any adverse claim thereto," is not only justified, but contractually bound, to pay the money to her. Having done so, having fulfilled its promises, it is entitled to a surrender of the contract it has fully and in good faith fulfilled. Such being the case it is manifest that the trustee has no legal right to again collect the whole amount of this policy from the company. *Frederick v. Metropolitan Life Ins. Co.*, (C. C. A. 3d Cir. 1917) 239 Fed. 125, 152 C. C. A. 167.

Effect of right to change beneficiary.—See to same effect as original annotation, *Cohen v. Samuels*, (1917) 245 U. S. 50, 36 S. Ct. 36, 62 U. S. (L. ed.) —, *reversing* (C. C. A. 2d Cir. 1916) 237 Fed. 796, 151 C. C. A. 38; *In re Shoemaker*, (E. D. Pa. 1915) 225 Fed. 329; *In re Bonvillain*, (E. D. La. 1916) 232 Fed. 370; *Malone v. Cohn*, (C. C. A. 5th Cir. 1916) 236 Fed. 882, 150 C. C. A. 144. *Compare In re Arkin*, (C. C. A. 2d Cir. 1916) 231 Fed. 947, 146 C. C. A. 143.

Where there is nothing more than the naming of the wife as beneficiary, and this is revocable by the husband, there the trustee may surrender the policy and receive the surrender value, and he does not lose this right unless paid an equivalent sum. If, however, there had been a bona fide assignment to the wife of the whole policy, including the right to the cash surrender value as well as the insurance moneys; and a fortiori, if the assignment has been for value, or before any debts were contracted by the husband, so that the policy was the property of the wife, the trustee could not sur-

render the policy or successfully claim its surrender value. *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Question of fact.—Question of title, in reclamation proceedings, is one of fact. *In re Aronson*, (D. C. Mass. 1917) 245 Fed. 207.

1912 Supp., p. 839, sec. 70b.

I. Appraisal of property.

II. Sales.

I. APPRAISAL OF PROPERTY (p. 839)

"An appraisal in bankruptcy is an estimate of the value of the bankrupt estate made by three disinterested persons. The appraisers are officers of the court and are selected with an especial regard to their fitness to give an opinion upon the value of the particular property comprising the estate." *Jacobsohn v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, L. R. A. 1918C 1176.

The purpose of the appraisement.—In this connection it has been said: "It seems to me that when property is to be administered through the bankruptcy court, it is highly desirable to have a reliable inventory at the earliest possible date; and I think this is especially true where receivers are operating a business. An official inventory which is not to be relied on involves obvious possibilities of danger, and may be worse than useless. In assuming that they were to make a careful and accurate inventory, the appraisers were right; and they are to be paid on that basis." *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 812.

II. SALES (p. 840)

Manner of selling assets.—*The power to sell is under the direction of the court.*—The trustee can only sell in accordance with the authority given by law. *In re Eden Musee American Co.*, (S. D. N. Y. 1916) 230 Fed. 925.

A sale through proceedings in bankruptcy is a judicial sale, subject to the same rules as an auction. The bidder may withdraw his bid at any time before the hammer falls. *In re Glas-Shipt Dairy Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 122, 152 C. C. A. 164.

Sale of assets free of incumbrances may be ordered. *In re Whiteside*, (N. D. Ga. 1916) 230 Fed. 937; *In re West*, (M. D. Pa. 1916) 232 Fed. 903.

When a lienholder accepts service of a petition to sell property free from liens such acceptance operates as a consent that it be sold on such terms. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

A mortgagee, who stands by and without objection or demand for the mortgaged property knowingly permits a court

order sale by a trustee in bankruptcy for less than the amount of the secured debt, will be limited in his preferred claim to the proceeds of the sale. Furthermore, even if a mortgagee knows nothing of the bankruptcy, the sale, or the order, his recovery would be limited to the actual value of the property sold. *In re States Printing Co.*, (C. C. A. 7th Cir. 1917) 241 Fed. 245, 154 C. C. A. 165.

Setting aside sale—Inadequacy of price.—"The rule is that mere inadequacy of price is not a sufficient ground for setting aside a judicial sale; but when the inadequacy is so great as in itself to raise a presumption of fraud or to shock the conscience of the court, it becomes gross inadequacy, and is a sufficient ground." *Jacobsohn v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, L. R. A. 1918C 1176.

A contract of sale entered into by a corporation before bankruptcy will not be set aside for mere inadequacy of consideration where it would result in expensive litigation, involving delay and loss to the estate. *In re Copiag-Linden-hurst Co.*, (N. D. N. Y. 1917) 240 Fed. 431.

Confirmation of sale involves exercise of judicial discretion. *In re Finks*, (C. C. A. 6th Cir. 1915) 224 Fed. 92, 139 C. C. A. 648.

"When in a given case a price is grossly inadequate and when upon that ground confirmation should be refused, are matters within the judgment and discretion of the tribunal ordering the sale. When a trial tribunal orders a judicial sale subject to its confirmation under authority expressly requiring of it the exercise of discretion in approving or setting aside the sale, an appellate tribunal will not reverse its discretion by substituting its own nor will it otherwise disturb or interfere with its exercise so long as it does not amount to an abuse of discretion." *Jacobsohn v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, L. R. A. 1918C 1176.

An order directing the trustee to sell all his right, title and interest in the estate of the bankrupt is not subject to objection by an adverse claimant. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1917) 244 Fed. 445, 157 C. C. A. 71.

Nunc pro tunc order.—An order of confirmation will not be treated nunc pro tunc of an earlier date where it would result in injustice. *In re Finks*, (C. C. A. 6th Cir. 1915) 224 Fed. 92, 139 C. C. A. 648.

1912 Supp., p. 844, sec. 70e.

Power conferred on trustee.—Trustees may impeach or set aside any fraudulent act or transaction of the bankrupt or assert any right which the creditor might have asserted. *Stellwagen v. Clum*, (1918)

245 U. S. 605, 38 S. Ct. 215, 62 U. S. (L. ed.) 252; *In re Webb Co.*, (E. D. Pa. 1915) 224 Fed. 258; *Cardozo v. Brooklyn Trust Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 333, 142 C. C. A. 625; *In re Progressive Wall Paper Co.*, (C. C. A. 2d Cir. 1916) 229 Fed. 489, 143 C. C. A. 557, L. R. A. 1916E 563; *Owens v. Daniel*, (C. C. A. 5th Cir. 1916) 230 Fed. 101, 144 C. C. A. 399; *In re Progressive Wall Paper Corp.*, (N. D. N. Y. 1916) 230 Fed. 171; *Manders v. Wilson*, (C. C. A. 9th Cir. 1916) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052; *Memphis First Nat. Bank v. Towner*, (C. C. A. 6th Cir. 1917) 239 Fed. 433, 152 C. C. A. 311; *Edison Electric Illuminating Co. v. Tibbetts*, (C. C. A. 1st Cir. 1917) 241 Fed. 468, 154 C. C. A. 300; *McGill v. Commercial Credit Co.*, (D. C. Md. 1917) 243 Fed. 637; *Angle v. Bankers' Surety Co.*, (C. C. A. 2d Cir. 1917) 244 Fed. 401, 157 C. C. A. 27.

Power is conferred upon a trustee to recover all the property transferred in fraud of creditors, although such recovery may result in the possession by the trustee of property in excess of the entire indebtedness of the bankrupt. *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

The trustee may sue for tortious injuries inflicted upon the estate property intermediate the petition and the adjudication, as to hold otherwise would be to say that the estate may be destroyed with impunity. *Arnold v. Horriggan*, (C. C. A. 6th Cir. 1916) 238 Fed. 39, 151 C. C. A. 115.

The trustee can act for all the creditors in asserting their rights to liens upon property coming into his custody by legal or equitable proceedings. *Sanborn-Cutting Co. v. Paine*, (C. C. A. 9th Cir. 1917) 244 Fed. 672, 157 C. C. A. 120.

It is to be assumed in the absence of proof to the contrary that the trustee as representing creditors has been injured by a conveyance executed by the bankrupt in fraud of his creditors, but it is not necessary that the extent to which he has been so injured should be equal to the entire value of the property conveyed. *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

Where a check was delivered by the bankrupt before but not paid until after petition and adjudication it was held that the trustee was entitled to recover the amount of the check, the delivery of the check not operating as an assignment or segregation of the funds on deposit, nor impressing those funds with any trust in favor of the payee. *In re Howe*, (D. C. Mass. 1916) 235 Fed. 908.

Transfer which any creditor "might have avoided."—The provision that "a trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided," etc., this means "which any

creditor might have avoided" under the laws of the state where the transaction occurred. *Manders v. Wilson*, (N. D. Cal. 1915) 230 Fed. 536.

Bill in equity.—Trustee may file bill in equity to recover property which has been fraudulently transferred by the bankrupt. *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

Bona fide transactions are excepted.—*Brent v. Simpson*, (C. C. A. 5th Cir. 1916) 238 Fed. 285, 151 C. C. A. 301.

Pleading.—A trustee in a suit to set aside a conveyance by a bankrupt is entitled to the relief sought where the petition alleges that there was no change of possession of the property, but that it remained in the open and notorious possession of the grantor, that the deed was withheld from record for the purpose of enabling the grantor to obtain credit upon his reputed and apparent ownership, and that such credit was obtained. *Manders v. Wilson*, (C. C. A. 9th Cir. 1916) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052.

1912 Supp., p. 846, sec. 70e.

[Jurisdiction.]

A court of bankruptcy has summary jurisdiction of a proceeding by the trustee to compel a third person to turn over to him property in the latter's possession and which is alleged to belong to the bankrupt's estates where the sole question is one of law. *In re Midtown Contracting Co.*, (S. D. N. Y. 1916) 238 Fed. 871.

1912 Supp., p. 847, sec. 70f.

After a composition has been confirmed the receiver has no right to receive any property as the property of the bankrupt and a pledgee of such property has no right to turn it over to the receiver; nor has the bankruptcy court jurisdiction to pass on claims made by third parties to any property thereafter turned over. *In re Hollins*, (C. C. A. 2d Cir. 1916) 238 Fed. 787, 151 C. C. A. 637.

1912 Supp., p. 848, sec. 72.

Bar to extra allowance.—This section and section 48a limit the court in its allowance to trustees. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 445, 145 C. C. A. 439. See also *In re Langford*, (S. D. Cal. 1915) 225 Fed. 311; *American Surety Co. v. Freed*, (C. C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 19.

There is no law authorizing compensation to a referee and a trustee proportionate to the difficulties encountered in administering an estate. *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 19.

Referee as special commissioner.—It has been declared that there can be no reference by the court to special commissioners to perform the statutory duties of referees, and that, if such a reference is made, the compensation of the referee, though called a special commissioner, is limited to that provided in section 40. *In re Nankin*, (C. C. A. 2d Cir. 1917) 246 Fed. 811.

CARRIERS

Vol. I, p. 728, sec. 13.

Action on bond.—In an action on a bond voluntarily given to secure penalties incurred by violation of this Act, the court, to determine its meaning, may look not only to the language of the instrument, but to the subject matter and surrounding circumstances, and while the bond is not a statutory bond, it is valid as a common-law obligation. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

Mitigation or remission of penalty.—While the Secretary of Commerce has no

authority to remit or mitigate any of the penalties incurred under this Act, he has revisory and supervisory authority to inquire and determine whether the statute has been violated and the extent of such violation, if any, and in accordance with such determination to direct the prosecution of the case or its abandonment in whole or in part as the facts found an examination may justify. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

CHINESE EXCLUSION

Vol. I, p. 756, sec. 2.

Authority of Secretary of Commerce and Labor to make rules.—Under this section the Secretary of Commerce and Labor had authority to adopt rule 7 of the regulations governing the admission of Chinese, exacting a bond for the granting of shore leave to Chinese sailors. *U. S. v. Vaccaro*, (E. D. La. 1916) 230 Fed. 943.

Vol. I, p. 758, sec. 4.

Power of collector of customs—board of examiners.—There is no conflict between the act of Congress extending the Chinese exclusion laws to the Philippine Islands and the action of a collector in selecting a board of examiners to determine the right to enter, in whom the power had been already lodged to act under the supervision of the collector concerning matters of immigration. *Sui v. McCoy*, (1915) 239 U. S. 139, 36 S. Ct. 95, 60 U. S. (L. ed.) 183, *affirming* 22 Phil. Island 361.

Vol. I, p. 760, sec. 2.

Chinese laborers.—The words "Chinese laborers" as used in the Exclusion Act were intended to designate all immigration to the United States from China other than that of privileged classes. *U. S. v. Jew Sung Qwong*, (D. C. Ore. 1916) 232 Fed. 279.

Chinese merchants—Partnership or firm.—To the same effect as the original annotation, see *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, wherein the court said: "It has been decided that membership in a firm is sufficiently proved if the name appears in the books of such firm and shows that the defendant was a member thereof."

Conducting factory.—One engaged solely in conducting a factory for the manufacture of materials furnished by others is not a merchant; but if, in addition to the work of a factory, he buys and sells goods, he is a merchant. *Ong Chew Lung v. Burnett*, (C. C. A. 9th Cir. 1916) 232 Fed. 853, 147 C. C. A. 47.

Adopted child of merchant.—The adopted child of a Chinese merchant takes the status of the person who adopted him and the fact that later on such adopted child becomes a laborer is no ground for his deportation. *U. S. v. Lee Chee*, (C. C. A. 2d Cir. 1915) 224 Fed. 447, 140 C. C. A. 649.

Nephew of merchant.—A Chinese boy, coming to this country with his uncle and under his charge and protection, should be given the status of the uncle; and being entitled to such status it would be

lawful for him to enter the United States without a certificate, providing the person with whom he came was of the merchant class. *U. S. v. Jew Sung Qwong*, (D. C. Ore. 1916) 232 Fed. 279.

Change of status—Student.—The fact that a Chinese person, properly admitted as a student, was compelled to labor in order to support himself temporarily until he could secure remittances from China, did not operate to take him permanently out of the "student" class excepted from the operation of the Exclusion Act. *U. S. v. Lau Chu*, (C. C. A. 2d Cir. 1915) 224 Fed. 446, 140 C. C. A. 648.

Evidence.—For an extensive review of evidence held insufficient to show that a Chinese person resisting deportation was ever a merchant in the United States, as defined in this section, see *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752.

Vol. I, p. 763, sec. 2.

Country to which deported.—The admission of Chinese descent and failure to show native-born citizenship of the United States give rise to a presumption that the person is a subject of China and by virtue of the provisions of this section, when adjudged to be not lawfully entitled to remain in the United States, he must be removed to China. *Ng You Nuey v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 340, 140 C. C. A. 26.

Wife of Chinese merchant.—The right of the wife of a Chinese merchant, to remain in the United States, is beyond question. *Ex parte Chan Shee*, (N. D. Cal. 1916) 236 Fed. 579.

Vol. I, p. 763, sec. 3.

Constitutionality.—A child born in the United States of Chinese parents domiciled in the United States becomes at the time of birth a citizen of the United States. It was competent for Congress, by the Chinese Exclusion Act, to empower a United States commissioner to determine the various facts upon which citizenship depends. *Louie Lit v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 75, 151 C. C. A. 151.

Evidence—Admissibility of testimony of Chinese witnesses.—The testimony of Chinese witnesses is competent and admissible to establish the right of a Chinese person to be and remain in the United States. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, *affirmed* (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144. See also *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed.

68, 151 C. C. A. 144; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

Evidence of pedigree.—The testimony of a Chinese person that according to his father's statements to him he was born in the United States, although hearsay evidence, is admissible and competent because the matter is one of pedigree or descent. *U. S. v. Lem You*, (S. D. N. Y. 1915) 224 Fed. 519.

Proof of merchant status by Chinese witnesses.—In *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144, it was held that the evidence of mercantile status was not insufficient because it consisted wholly of Chinese witnesses.

Sufficiency.—For evidence held sufficient to sustain the burden of proving native-born citizenship, see *U. S. v. Chin Mum*, (D. C. Me. 1915) 225 Fed. 799.

For a case wherein the evidence was held sufficient to establish the right of a Chinese person to remain in the country and revoking an order of deportation, see *U. S. v. Jung You*, (E. D. Pa. 1916) 235 Fed. 1012.

For evidence held insufficient to support the burden of proving citizenship, see *Hoey Ay Sing v. U. S.*, (C. C. A. 3d Cir. 1915) 227 Fed. 209, 142 C. C. A. 9; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

Certificate of commissioner as evidence.—A certificate of the United States commissioner that a Chinaman was brought before him charged with being unlawfully within the United States and was adjudged to have the right to remain in the United States by reason of his being a citizen, is not evidence of a judgment. *Ex parte Chin Quock Wah*, (W. D. Wash. 1915) 224 Fed. 138.

Burden and measure of proof.—The burden is on the United States to prove that the defendant is a Chinese person, or person of Chinese descent and that he was found within the United States. When this is done, the burden rests on such Chinese person or person of Chinese descent to prove to the satisfaction of the judge or commissioner, that he has a lawful right to remain in the United States. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752; *U. S. v. Quan Wah*, (C. C. A. 2d Cir. 1915) 224 Fed. 420, 140 C. C. A. 114, *following U. S. v. Hom Lim*, (C. C. A. 2d Cir. 1915) 223 Fed. 520, 139 C. C. A. 68.

Assertion of citizenship.—Where a person of the Chinese race claims to be a citizen by birth of the United States, the burden of proof is upon him to sustain the claim. *Ng You Nuey v. U. S.*, (1915) 224 Fed. 340, 140 C. C. A. 26; *Lum Kim v. U. S.*, (C. C. A. 6th Cir. 1915) 225 Fed. 31, 140 C. C. A. 357; *Jew Lee v. U. S.*, (C. C. A. 2d Cir. 1916) 237 Fed. 1013, 151 C. C. A. -75; *Young Ti v. U. S.*,

(C. C. A. 3d Cir. 1917) 246 Fed. 110, 158 C. C. A. 336.

And the assertion of a claim of domestic birth cannot shift the burden upon the government of showing that the claimant was not born within the United States. *Woo Vey v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 838, 155 C. C. A. 426.

If the applicant is the son of an American citizen of Chinese descent, he is also such citizen and entitled to enter as such, but the burden of proving such relationship is upon the applicant. However that burden should not be increased by throwing extraneous matters into the scales against him, as for instance proof of the father's sense of allegiance to this country. *Ex parte Wong Foo*, (N. D. Cal. 1916) 230 Fed. 534. See also *Ex parte Lee Dung Moo*, (N. D. Cal. 1916) 230 Fed. 746; *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747; *Ex parte Ng Doo Wong*, (N. D. Cal. 1915) 230 Fed. 751.

When a Chinese person relies upon his mercantile status for his right to be here, the burden is upon him to prove it. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

Credibility of Chinese witnesses.—Mercantile status, at the time of the passage of this Act, providing for the registration of Chinese laborers, may be established by Chinese witnesses. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144. See also *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, *affirmed* (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

In determining the weight to be given the testimony of Chinese persons, the policy of Congress as declared in the Act of May 5, 1892, § 6, and Act of Nov. 3, 1893, § 2 (1 Fed. Stat. Annot. 764, 760), may be considered. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, *following U. S. v. Lee Huen*, (N. D. N. Y. 1902) 118 Fed. 442.

Prior adjudication.—The fact that the right of a Chinese person to remain in the United States has already been decided in his favor in previous deportation proceedings conclusively established his right to remain. And this right is not affected by subsequent misconduct. *U. S. v. Lew Ah Jung*, (D. C. Mass. 1915) 224 Fed. 649.

Consulate attaché.—That a Chinese person is an attaché of a Chinese consular office in the United States is not a defense where the original entry of such person into the country was surreptitious. Such status cannot cure an irregular or illegal entry into the country. *U. S. v. Gin Dock Sue*, (N. D. Cal. 1915) 230 Fed. 657, *affirmed* (C. C. A. 9th Cir. 1917) 245 Fed. 308, 157 C. C. A. 500.

Conclusiveness of findings.—The discretion exercised by the trial judge in affirming the commissioner's order of deportation should not be lightly disturbed. *Young Ti v. U. S.*, (C. C. A. 3d Cir. 1917) 246 Fed. 110, 158 C. C. A. 336.

While an appellate court should be very slow to disturb the findings of fact of the commissioner and the District Court, it is beyond question that appellate courts have jurisdiction to inquire into and to reverse such findings. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144, wherein the court reversed an order of deportation on the ground that error was committed in failing to accord to testimony its natural probative force and in failing to find that it was of the force required by statute. See also *Louie Lit v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 75, 151 C. C. A. 151.

Where the assignment of errors brings up the single question that the judgment is against the weight of evidence, the commissioner and the judge agreeing, the decision on the facts will not be disturbed by an appellate court. *Lee Lew You v. U. S.*, (C. C. A. 2d Cir. 1916) 230 Fed. 820, 145 C. C. A. 130; *Chin Sing Quon v. U. S.*, (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144, *affirming* (N. D. N. Y. 1915) 224 Fed. 752; *Ng Jung v. U. S.*, (C. C. A. 2d Cir. 1916) 233 Fed. 992, 147 C. C. A. 666; *Chin Hung v. U. S.*, (C. C. A. 7th Cir. 1917) 240 Fed. 341, 153 C. C. A. 267; *Woo Vey v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 838, 155 C. C. A. 426.

And the fact that no evidence was introduced by the appellant before the commissioner, and all the evidence on the hearing in the District Court was by deposition, will not render this rule, limiting the right to repeated trial of facts in cases under this statute, inapplicable. *Wong Woo v. U. S.*, (C. C. A. 5th Cir. 1917) 240 Fed. 673, 153 C. C. A. 471.

Vol. I, p. 764, sec. 5.

Bail.—The issuance of a writ of habeas corpus does not change the status of the relator. The writ does not disturb the custody but simply requires his production for the purpose of examining into the legality of his detention. The relator is not, in a legal sense, within the United States, and no power is given by the statute to the court to admit an alien by giving bail pending an appeal from a decision of the court finding that he has been accorded a fair hearing by the commissioner. *In re Chin Own*, (W. D. Wash. 1917) 242 Fed. 996.

Vol. I, p. 764, sec. 6.

Purpose of provision.—Exemption of merchants.—See *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

Evidence.—Certificate prima facie proof.—The certificate is primary evidence of the right to remain in this country and the executive authorities are not justified in arbitrarily disregarding its effect. After the certificate is issued, the burden is cast upon the government, in case of attack on it, to show by testimony which the law recognizes as evidence, that it should be annulled before an order for deportation is warranted. *Wong Yee Toon v. Stump*, (C. C. A. 4th Cir. 1916) 233 Fed. 194, 147 C. C. A. 200, *reversing* (D. C. Md. 1915) 227 Fed. 247. See also *Lui Hip Chin v. Plummer*, (C. C. A. 9th Cir. 1917) 238 Fed. 763, 151 C. C. A. 613.

But where the holder of a certificate of residence leaves the United States and goes to a foreign country, he must on re-entering this country show that he has complied with the law and that his re-entry was not fraudulent. In such case the original certificate is not *prima facie* evidence of his right to remain. *Bun Chew v. Connell*, (C. C. A. 9th Cir. 1916) 233 Fed. 220, 147 C. C. A. 226.

Merchant subsequently becoming laborer.—The fact that one who has been admitted into the United States as a merchant subsequently becomes a laborer is not in itself ground for his deportation. But if one who has been admitted on certificate as a merchant immediately on his arrival proceeds to engage in and continues in employment as a laborer, that fact has a strong retroactive bearing as evidence of the intent with which he came. *Lui Hip Chin v. Plummer*, (C. C. A. 9th Cir. 1917) 238 Fed. 763, 151 C. C. A. 613; *Lew Loy v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

Where a Chinese person was a merchant at the time of the test of his right to remain in the country, namely, the registration period, and he thereafter acquired the status of a laborer, such change of status does not work a forfeiture of his right lawfully to remain in the country. But under the circumstance of his arrest as a laborer, there devolves upon him the necessity of overcoming the natural presumption arising from his status when arrested. Being a laborer when arrested, he is bound to produce a laborer's certificate or show a reason why such certificate could not or need not be produced by him. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

In *U. S. v. Fong Foo*, (N. D. Ia. 1916) 235 Fed. 452, it was held that where a Chinese person, under the status of a merchant, departed for China, and on his return a few years later was permitted to re-enter as a merchant, but did not thereafter engage in the business of a merchant or in any other occupation than that of a laborer, his status reverted to that of

a laborer, and in the absence of a certificate of residence, as required by this section, he was subject to deportation.

Under Immigration Act.—The Department of Labor has power and authority under section 21 of the Immigration Act (1909 Supp. Fed. Stat. Annot. 170) to determine the right of a Chinese person, charged with being in the United States in violation of this section, to remain in the United States. *Ex parte* Lee Ying, (W. D. N. Y. 1915) 225 Fed. 335; *Ex parte* Woo Shing, (N. D. Ohio 1915) 226 Fed. 141; *Sibray v. U. S.*, (C. C. A. 3d Cir. 1915) 227 Fed. 1, 141 C. C. A. 555; *Ex parte* Chin Him, (W. D. N. Y. 1915) 227 Fed. 131; *U. S. v. Prentis*, (N. D. Ill. 1916) 230 Fed. 935; *Wong Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 410, 157 C. C. A. 36. But see the note under section 13 of the Act of Sept. 13, 1888, *infra*; this page.

Vol. I, p. 770, sec. 7.

Identification—Sufficiency.—For identification of a Chinese person, charged with entering in violation of this section, held to be insufficient to warrant an order of deportation, see *White v. Tom Yuen*, (C. C. A. 9th Cir. 1917) 244 Fed. 739, 157 C. C. A. 187.

Vol. I, p. 772, sec. 13.

Nature of proceedings.—Proceedings in the matter of Chinese exclusion are summary; they are not to be compared with the trial of either a civil or criminal suit, nor do they resemble hearings before a committing magistrate. The statute contains no prohibition upon asking a Chinaman questions regarding his right to remain in this country at any time or place, or by any officer or official, and what the statute does not forbid it is not in the interests of justice to read into the Act, because it is highly conducive to ascertain the truth to find out what the Chinaman will say when suddenly asked as to his right to remain. *U. S. v. Lem You*, (S. D. N. Y. 1915) 224 Fed. 519; *U. S. v. Moy Toom*, (S. D. N. Y. 1915) 224 Fed. 520.

Hearing de novo.—The appellant has the right to have the whole case retried in another court, that is tried de novo, and disposed of there without any regard to the proceedings before the commissioner. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752; *U. S. v. Chin Dong Ying*, (D. C. Mass. 1916) 229 Fed. 813.

Prior adjudication.—An adjudication by a United States commissioner in deportation proceedings that the defendant was born in the United States, and the issuance to him of a certificate, establishes his right to remain in the United States, and subsequent misconduct will not deprive him of the right thus acquired.

U. S. v. Lew Ah Jung, (D. C. Mass. 1915) 224 Fed. 649.

Use of writ of habeas corpus.—The writ of habeas corpus cannot be used as a substitute for the appeal provided for in this section. *U. S. v. McCarthy*, (S. D. N. Y. 1916) 228 Fed. 398.

Change of status—Student.—Where a Chinese person came to the United States, properly certified as a student, supported by his father in China, the fact that he supported himself temporarily during a period when his father was unable to send remittances, did not operate to take him permanently out of the "student" class excepted from the operation of the Exclusion Act. *U. S. v. Lau Chu*, (C. C. A. 2d Cir. 1915) 224 Fed. 446, 140 C. C. A. 648.

Under Immigration Act.—In *Lee Wong Hin v. Mayo*, (C. C. A. 5th Cir. 1917) 240 Fed. 368, 153 C. C. A. 294, it was held that a Chinese person, being subject to deportation under the Chinese Exclusion Act, could not therefore be deported under the procedure provided for under section 21 of the Immigration Act (1909 Supp. Fed. Stat. Ann. 170) unless such Chinese alien is held under a warrant charging a violation of some provision of the Immigration Act. Construing the procedure under both Acts, the court said: "Under [section 13] the Chinese person is entitled to a judicial hearing to determine his status, either before a justice, judge or commissioner, or before a United States court, and is entitled, if convicted before a commissioner, to an appeal to the District Judge, and from the order of the District Court is entitled to an appeal to the Circuit Court of Appeals." See further the note under section 6, Act of May 5, 1892, *supra*, this page.

Vol. I, p. 774, sec. 14.

Consulate attaché.—An attaché of a Chinese consulate, whose original entry into the United States was surreptitious, is subject to deportation. *U. S. v. Gin Dock Sue*, (N. D. Cal. 1915) 230 Fed. 657, *affirmed* (C. C. A. 9th Cir. 1917) 245 Fed. 308, 157 C. C. A. 500.

Vol. I, p. 774, sec. 1.

"Chinese laborers" defined.—The words "Chinese laborers," as used in the Act, were intended to designate all immigration to the United States from China other than that of privileged classes. *U. S. v. Jew Sung Gwong*, (D. C. Ore. 1916) 232 Fed. 279.

Merchant afterward becoming laborer.—The mere fact that an alien who has been domiciled as a merchant thereafter becomes a laborer does not itself justify deportation. *Ong Seen v. Burnett*, (C. C. A. 9th Cir. 1916) 232 Fed. 850, 147 C. C. A. 44.

Chinese persons born in United States.—The Chinese Exclusion Act does not apply to persons of that race, even though laborers, if they were born in the United States, of parents living in the United States. *U. S. v. Chin Hing*, (D. C. Me. 1915) 225 Fed. 794.

Evidence of citizenship.—Where a Chinese person seeks to remain in the United States upon the claim that he was born in this country, the burden is upon him to prove it, and where the commissioner and the district judge determine the fact as to the place of birth, such determination will not be disturbed on appeal. *Jew Lee v. U. S.*, (C. C. A. 2d Cir. 1916) 237 Fed. 1013, 151 C. C. A. 75.

Vol. I, p. 778, sec. 6.

Force and effect of certificate.—The admission of a Chinese person into this country, under a merchant's certificate admittedly in due form, places him in the exempt class, and he cannot be deported from having fraudulently entered the United States unless there is some competent evidence to overcome the legal effect of the certificate. *U. S. v. Fong Hong*, (D. C. N. J. 1916) 233 Fed. 168, following *Liu Hop Fong v. U. S.*, (1908) 209 U. S. 453, 28 S. Ct. 576, 52 U. S. (L. ed.) 888.

Certificate prima facie evidence.—The certificate is prima facie evidence only of the facts set forth therein and may be controverted and the facts there stated may be disproved by the United States authorities. *U. S. v. Fong Hong*, (D. C. N. J. 1916) 233 Fed. 168; *Lo Pong v. Dunn*, (C. C. A. 8th Cir. 1916) 235 Fed. 510, 149 C. C. A. 56.

The certificate of admission is prima facie evidence of such right. But it is open to the government to show that the entry was in fact not for the purpose of following the occupation of a merchant but for the purpose of immediately becoming a laborer, in evasion of the Exclusion Act. And the court, if so satisfied, is justified in holding that the entry was in violation of the statute and not the one so entering is unlawfully here. *Lew Loy v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

Annulment of certificate.—While the certificate is prima facie evidence of the right to enter and remain in the country, and it may be overcome by competent evidence that it was fraudulently obtained, fraud in procuring the same cannot be merely imputed. It is incumbent upon the government to overcome its legal effect by evidence and not by presumption. It ought not to be annulled on suspicion and conjecture. *Moy Kong Chiu v. U. S.*, (C. C. A. 7th Cir. 1917) 246 Fed. 94, 158 C. C. A. 320.

Wife of Chinese merchant.—The right of the wife of a resident Chinese mar-

chant to enter this country is beyond question. *Ex parte Cham Shee*, (N. D. Cal. 1916) 236 Fed. 579.

Children of Chinese merchants — *Minor son becoming laborer*.—It is well settled that a minor son of a member of the exempt classes, admitted as such into the United States, does not forfeit his right to remain by subsequently doing a laborer's work. *Ex parte Wong Yee Toon*, (D. C. Md. 1915) 227 Fed. 247, reversed on other grounds (C. C. A. 4th Cir. 1916) 233 Fed. 194, 147 C. C. A. 200; *Lam Fung Yen v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 393, 147 C. C. A. 329.

The fact that one who lawfully entered as the minor son of a merchant has since become a laborer is not enough to destroy his right to remain. *Lew Loy v. U. S.*, (1917) 242 Fed. 405, 155 C. C. A. 181. But it is open to the government to show that the entry of a minor son was not for the purpose of conserving the family relation or following the occupation of a merchant. So, the fact that a Chinese person, securing admission as the son of a merchant, is twenty years of age, immediately becomes and continues as a laborer, is strong evidence tending to show that he came into the United States as a laborer. *Lew Loy v. U. S.*, (1917) 242 Fed. 405, 155 C. C. A. 181.

Vol. I, p. 782, sec. 10.

Who is "master."—The owner of the minority interest in a gasoline launch, without the knowledge or consent of the owner of the majority interest and in violation of agreement, had himself enrolled as master and used the vessel to bring Chinese persons to a United States port, where the vessel was seized under this Act. It was held that such minority owner was not the master of the vessel within the meaning of this section, and that the interest of the majority owner was not subject to forfeiture because of the former's action. *The Calypso*, (C. C. A. 9th Cir. 1916) 230 Fed. 962, 145 C. C. A. 156, affirming (N. D. Cal. 1914) 217 Fed. 669.

Vol. I, p. 782, sec. 11.

Conspiracy — *Indictment*.—Conspiracy for a violation of this section is not of itself a crime under the Exclusion Act; hence the acts need not be charged with the same particularity. *U. S. v. Dahl*, (W. D. Wash. 1915) 225 Fed. 909, affirmed (C. C. A. 9th Cir. 1916) 234 Fed. 618, 148 C. C. A. 384; *Lew Moy v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 50, 150 C. C. A. 252.

Evidence.—For evidence held sufficient to warrant a conviction under an indictment for conspiring to violate this section, see *Louie Ding v. U. S.*, (C. C. A.

9th Cir. 1917) 246 Fed. 80, 158 C. C. A. 306.

Effect of Immigration Act.—The offenses denounced in this section are governed by and punishable under the Chinese Exclusion Act only. The Immigra-

tion Act of Feb. 20, 1907, § 8 (1909 Supp. Fed. Stat. Ann. 165) is inapplicable thereto. *Stoneberg v. Morgan*, (C. C. A. 8th Cir. 1917) 246 Fed. 98, 158 C. C. A. 324.

CITIZENSHIP

Vol. I, p. 786, sec. 1993.

Children born abroad.—Where a native of China seeks admission as the son of a native-born citizen, the question of relationship should be fairly investigated with a view to ascertain the truth and with a perfect willingness to admit him as a citizen under this law, instead of being investigated in a spirit hostile to the law, which, lacking the power to repeal, accomplishes the same result by denying to it effect. *Ex parte Lee Dung Moo*, (N. D. Cal. 1916) 230 Fed. 746; *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747.

A native of China, who claims admission as the son of a native-born citizen, should not be denied admission solely on the ground that his application was not made until some years after he reached majority. *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747; *Ex parte Ng Doo Wong*, (N. D. Cal. 1915) 230 Fed. 751.

1909 Supp., p. 68, sec. 2.

To whom applicable.—In *U. S. v. Howe*, (S. D. N. Y. 1916) 231 Fed. 546, it appeared that a naturalized citizen returned to his native country, where he had left his family, and resided there for nearly ten years, during which time he took no steps to register himself as an American citizen with any diplomatic or consular officer. On his return to America, his right to enter was questioned by the immigration authorities on the ground that he was an undesirable alien. On petition for habeas corpus, it was held that under this section the relator had lost his citizenship by his continuous residence abroad, that the Act applied to a naturalized citizen, and was constitutional and valid as to him, although it was not passed until after he left the United States. This decision was, however, partly based on a provision of

a treaty between the United States and Sweden, that if a naturalized Swede or Norwegian, who has become a naturalized citizen of the United States, renews his residence in his native country without the intent of returning to America, he is to be held by the United States as having renounced his American citizenship.

However, in *Stein v. Fleischmann Co.*, (S. D. N. Y. 1916) 237 Fed. 679, it was held, in view of a treaty between the United States and Austria, providing that an emigrant should not forfeit his citizenship by returning to his original country, unless he shall, of his own accord, reacquire his former citizenship and renounce that obtained by naturalization, that an Austrian could not sue as an alien in the federal courts, notwithstanding the fact that he had resided in Austria for more than two years and had taken no steps to retain his American citizenship.

Enlistment in foreign army.—One who moves to another country, and enlists in a foreign army, taking the oath of allegiance to the sovereign of the foreign state, and actually enters service, thereby effectually expatriates himself under this section. *Ex p. Griffin*, (N. D. N. Y. 1916) 237 Fed. 445.

1909 Supp., p. 69, sec. 3.

Constitutionality.—This section is constitutional. *Mackenzie v. Hare*, (1915) 239 U. S. 299, 36 S. Ct. 106, 60 U. S. (L. ed.) 297, Ann. Cas. 1916E 645, *affirming* (1913) 165 Cal. 776, 134 Pac. 713, Ann. Cas. 1915B 261.

An American woman married to a resident foreigner is not a citizen of the United States. *Mackenzie v. Hare*, (1915) 239 U. S. 299, 36 S. Ct. 106, 60 U. S. (L. ed.) 297, Ann. Cas. 1916E 645, *affirming* (1913) 165 Cal. 776, 134 Pac. 713, Ann. Cas. 1915B 261.

CIVIL RIGHTS

Vol. I, p. 796, sec. 1980.

Evidence.—For evidence sufficient to sustain a conviction for violation of this section by conspiring to prevent colored persons from voting on account of their race and color, see *Guinn v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 103, 142 C. C. A. 509.

Vol. I, p. 801, sec. 1990.

Punishment for failure to perform service.—A state statute has been held invalid making it a misdemeanor punishable by fine or imprisonment to fail or refuse without just cause to perform labor or service under a contract, or to fail or refuse to pay for money or other advances received by virtue of the contract. *Goode v. Nelson*, (Fla. 1917) 74 So. 17.

Vol. I, p. 802, sec. 5508.

Conspiracies against elective franchise.—*State nominating primary.*—In *U. S. v. Gradwell*, (1917) 243 U. S. 476, 37 S. Ct. 407, *affirming* (D. C. R. I. 1916) 234 Fed. 446, (S. D. W. Va. 1916) 236 Fed. 993, it was said that while this section as embodied in PENAL LAWS, 1909 Supp., p. 484, § 19, was applicable to certain conspiracies against the elective franchise as decided by *U. S. v. Mosley*, [1915] 238 U. S. 383, 35 S. Ct. 904, 59 U. S. (L. ed.) 1355, that decision fell far short of making the section applicable to the conduct of a state nominating primary. Accordingly it was held that the lower court did not commit error in sustaining a demurrer to an indictment which charged that the defendants conspired to procure and did procure a large number of persons not legal voters of West Virginia to vote, and a number of them to vote more than once, in favor of one of the four candidates for the Republican nomination for United States Senator at a state primary.

Congressional election.—The right of voters to vote at an election for member of

Congress is a right "secured by the Constitution and laws of the United States" and a conspiracy to deprive them of that right is covered by this section. *Aczel v. U. S.*, (C. C. A. 7th Cir. 1916) 232 Fed. 652, 146 C. C. A. 578; *Guinn v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 103, 142 C. C. A. 509.

A conspiracy to bribe voters at a general election within a state where presidential electors, a United States senator, and representatives in Congress are to be chosen is not an offense within this section, which now constitutes section 19 in PENAL LAWS, 1909 Supp., p. 410. *U. S. v. Bathgate*, (1918) 246 U. S. 220, 38 S. Ct. 269, 62 U. S. (L. ed.) —.

Threaten or intimidate.—Allegations of "peremptory ordering, requiring and directing" a voter are "without substance and of no legal effect." *U. S. v. Wilcox*, (D. C. R. I. 1917) 243 Fed. 993; *U. S. v. Welch*, (D. C. R. I. 1917) 243 Fed. 996, holding also that "a threat to use efforts to certain end cannot be regarded as in substance the same as a direct threat of the thing to be accomplished by such efforts," and that "if there is a conspiracy to coerce a voter the intended means should appear to have some adaptation to the end."

Intent in respect of the federal right is an essential element of the offense charged under this section. *Buchanan v. U. S.*, (C. C. A. 8th Cir. 1916) 233 Fed. 257, 147 C. C. A. 263; *Guinn v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 103, 142 C. C. A. 509.

Separate offenses in same count.—A count in an indictment which shows a conspiracy to injure voters in their right to vote is punishable under this section, and is not rendered invalid by the fact that it also contains charges with respect to the right to serve as election officers and the right of immunity from arrest, irrespective of whether such other rights are protected by the section. *Aczel v. U. S.*, (C. C. A. 7th Cir. 1916) 232 Fed. 652, 146 C. C. A. 578.

CIVIL SERVICE

1914 Supp., p. 45. [Collectors of internal revenue, etc.]

Constitutionality.—It was competent for Congress to exempt the marshal's office from the provisions of all laws relating

to civil service and to subject the deputies to the terms of the exempting enactment. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

Construction.—The fact that this provision was a rider in an appropriation

bill cannot affect its construction. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

Removal from office.—Under this provision a United States marshal may remove a deputy marshal at his discretion, and may be not controlled by mandamus. So much of the Act of Aug. 24, 1912,

ch. 389, § 6 (see *POSTAL SERVICE*, 1914 Supp., p. 317), providing for the removal of persons from the classified civil service, as is inconsistent with this section must yield so far as the appointment of deputy marshals is concerned. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

CLAIMS

Vol. II, p. 7, sec. 3477.

Compliance with statute necessary.—An assignment which does not comply absolutely with this section is void as between the assignor and assignee, as well as between all other parties. *Manhattan Commercial Co. v. Paul*, (1916) 216 N. Y. 481, 111 N. E. 76, *overruling* *York v. Conde*, (1895) 147 N. Y. 486, 42 N. E. 193.

Lien.—Since the purpose of this section is to protect the government and not the interests of the parties, an equitable lien, created by assignment, on moneys accruing under a contract with the United States is not invalid. *Jennings v. Whitney*, (1916) 224 Mass. 138, 112 N. E. 655.

Government contract.—In *Hegness v. Chilberg*, (C. C. A. 9th Cir. 1915) 224 Fed. 28, 139 C. C. A. 492, it appeared that a partnership contract was made between two parties for the purpose of bidding for a mail contract, which was to be carried out, if obtained by one of the parties. It was held that the contract was not invalid under this section because of a provision which required the partner in whose name the contract was taken to indorse warrants which he received from the government, and deliver them to the other partner.

Vol. II, p. 20, sec. 3482.

Operation of statute.—This section was intended to provide for losses to those engaged in military service in time of war. It was amended by the Act of June 22, 1874, ch. 395, but that Act was temporary legislation only intended to effect the consideration of a specific class of claims theretofore existing, if and when presented within the time limit prescribed by the Act and when the Act expired by its own limitation this section remained in force unaffected thereby. *Griffis v. U. S.*, (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1.

Vol. II, p. 26. [Act of March 3, 1885.]

"Private property" defined.—The term private property as used in this Act includes all articles carried by the persons

enumerated into the military service which were indispensable to the conditions of that service and comprehends privately arrived horses inasmuch as they are not specifically excluded by the terms of the Act. *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

Property in military service.—This Act is expressly limited to times of peace, but the term "in the military service" has a universally accepted legal meaning and Congress clearly did not intend to make the Government an insurer of privately owned property while in the military service, but limited liability to the loss and destruction of such property directly caused by military service and in nowise attributable to the fault or negligence of the soldier. *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

"In time of war" in proviso.—A loss occurring May 16, 1899, of private property aboard a transport bound from Porto Rico to New York which was wrecked, although the troops aboard were destined for service in the Philippines after refitting in New York was not "in time of war" within the meaning of this Act. *Newcomber v. U. S.*, (1916) 51 Ct. Cl. 408.

Presentation of claim.—Claims under this Act must have been presented to the "proper accounting officer" within two years from the occurrence of the loss. *Griffis v. U. S.*, (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1; *Goodman v. U. S.*, (1917) 52 Ct. Cl. 244. See also *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

Presentation of claims under this Act to the Quartermaster General is not a presentation to "the proper accounting officer." *Griffis v. U. S.*, (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1.

The requirement of presentation within two years to the accounting officers is a condition precedent to the right of action. *Newcomber v. U. S.*, (1916) 51 Ct. Cl. 408.

Jurisdiction of Court of Claims.—By virtue of its general jurisdiction of claims "founded upon . . . any law of congress" given in Judicial Code, § 145, 1912 Supp., p. 200, the Court of Claims has jurisdiction of claims arising under

this act where (1) the facts are undisputed and the accounting officers misapply the law, or (2) they refuse to act on claims properly presented, or (3) payment by the treasury of their award is refused. *Newcomber v. U. S.*, (1916) 51 Ct. Cl. 408.

Vol. II, p. 31, sec. 5438.

See notes to *PENAL LAWS*, 1909 Supp., p. 414, § 35 *infra*, this volume.

Vol. II, p. 45, sec. 3466.

Priority.—Where a nonresident contractor failed to complete a building which he had undertaken to construct for the government, and his property was attached in the state court by the bank which had advanced him money, the surety on the contractor's bond replevied it, completed the building and claimed subrogation to any claim of the government. It was held that even if the words "absent debtor" as used in this section could be construed to mean a nonresident, yet the government had no priority to which the surety could be subrogated, since the attachment did not operate as a sequestration of the property for distribution among the creditors. *People's Nat. Bank v. Corse*, (1915) 133 Tenn. 720, 182 S. W. 917.

Priority as creating lien.—This section and R. S. sec. 3468 do not create a lien on the debtor's property as such. *People's Nat. Bank v. Corse*, (1915) 133 Tenn. 720, 182 S. W. 917.

Vol. II, p. 55, sec. 1059, cl. first.

Claims sounding in tort.—Where a steamer is seized by the proper military authorities during pendency of rebellion or insurrection upon the ground that it is the property of the enemy and was at the time being used in furtherance of the rebellion, and the vessel is subsequently used in the service of the United States, there is no implied contract to pay for

the use thereof. The claim for such use sounds in tort, and the party cannot waive the tort and sue in assumpsit. *Castelo v. U. S.*, (1916) 51 Ct. Cl. 221.

Vol. II, p. 60, sec. 1059, cl. fourth.

See *post*, title *JUDICIARY*, notes to 1912 Supp., p. 205, *Jud. Code*, § 162.

Vol. II, p. 80, sec. 1, cl. first.

See *post*, title *JUDICIARY*, notes to 1912 Supp., p. 200, *Jud. Code*, § 145, par. 1.

Vol. II, p. 82, sec. 2.

See also *post*, title *JUDICIARY*, notes to 1912 Supp., p. 139, *Jud. Code*, § 24, par. 20.

Recovery of taxes paid under protest to a collector of internal revenue may be had in a suit under this paragraph. *Philadelphia, etc., R. Co. v. Lederer*, (E. D. 1917) 239 Fed. 184, *citing U. S. v. Emery, etc., Realty Co.*, (1915) 237 U. S. 28, 35 S. Ct. 499, 59 U. S. (L. ed.) 825.

Costs against United States.—In a suit brought under this section as re-enacted in *Judicial Code*, § 24, par. 20, 1912 Supp. 138, where judgment is rendered in favor of the plaintiff, costs may be awarded against the United States. *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746.

Vol. II, p. 96, sec. 3.

Amendment of petition.—Where in a claim under this act it appears that two separate depredations were committed, one by the Cheyennes and the other by the Sioux, and where the Cheyennes alone were named as the Indian defendants therein, it is not allowable to make a change of parties by an amendment to the original petition, so as to make the Sioux joint defendants, and the plaintiff is furnished no relief by the amendment of the first section of this Act by the Act of Jan. 11, 1915, ch. 7 (1916 Supp. 24). *Coffield v. U. S.*, (1916) 52 Ct. Cl. 17.

COINAGE, MINTS AND ASSAY OFFICES

Vol. II, p. 116, sec. 3504.

Power of removal by superintendent.—The power of appointment of workmen was, prior to the passage of the Act of Aug. 23, 1912, ch. 350, § 1 (1914 Supp. 45), vested in the superintendent of the mint and his appointments were valid unless disapproved by the director, and in the absence of a statutory provision relating to the removal of workmen appointed by the superintendent, that power is incident to the power to appoint. *Costello v. U. S.*, (1916) 51 Ct. Cl. 257.

1914 Supp., p. 45. [Act of Aug. 23, 1912.]

Power of superintendent.—This Act took effect from the date of its passage, and the power of a superintendent of a mint to remove a workman prior to that date was not affected by the date mentioned in the statute from which the Secretary of the Treasury should control. *Costello v. U. S.*, (1916) 51 Ct. Cl. 257.

COLLISIONS

Vol. II, p. 155, art. 5.

Obstruction of lights.—A schooner is guilty of fault in so carrying her green light that it was screened by her sails from an approaching steamer. *The Brand*, (C. C. A. 3d Cir. 1915) 224 Fed. 391, 140 C. C. A. 77, Ann. Cas. 1917B 996, *affirming* (E. D. Pa. 1914) 214 Fed. 266.

Vol. II, p. 160, art. 16.

Rule absolute.—Under this article when a vessel is proceeding in a fog and a whistle is heard apparently forward of her beam the position of which is not ascertained, the duty to stop the engines, if the circumstances will permit, is imperative. *Lie v. San Francisco, etc., Steamship Co.*, (1917) 243 U. S. 291, 37 S. Ct. 270, 61 U. S. (L. ed.) 726, *affirming* (C. C. A. 9th Cir. 1915) 219 Fed. 134, 135 C. C. A. 32.

Violation of rule.—Where it appeared that steamer and a tug approaching each other, both sounding fog signals, and the steamer on hearing a whistle ahead, stopped for a minute, and hearing no response to the whistle she gave, was started forward, but her engine was almost immediately reversed on hearing another signal, it was held that she was in fault for violating this article. *The Tillicum*, (C. C. A. 9th Cir. 1916) 230 Fed. 415, 144 C. C. A. 557.

Vol. II, p. 174. [Definitions.]

A collision between a steam vessel and a schooner whose sails were furled and which was being propelled by a gasoline motor alone, is a collision between two "steam vessels" within the meaning of this preliminary article. *The Machigonne*, (C. C. A. 1st Cir. 1916) 230 Fed. 777, 145 C. C. A. 87.

Vol. II, p. 176, art. 11.

Position of lights.—Where it is shown that the lights on a vessel at anchor were clearly visible, and in proper position except that the stern light was not more than 10 feet lower than the forward light instead of 15 feet as required by this article, that fact alone is not sufficient to charge her with fault for collision with a vessel in motion. *The John G. McCullough*, (C. C. A. 4th Cir. 1916) 239 Fed. 111, 152 C. C. A. 153.

Vol. II, p. 178, art. 16.

Moderate speed.—A sailing vessel proceeding with all sails set and drawing in a dense fog is going faster than necessary to maintain steerageway, is not going at

the "moderate speed" required by the article, and is at fault for steaming at an excessive speed. *The Robert M. Thompson*, (C. C. A. 2d Cir. 1917) 244 Fed. 662, 157 C. C. A. 110.

Mutual fault.—Where it appeared that a steamship and a pilot boat collided in a fog which rendered each invisible to the other until within a distance of 500 feet, it was held that both were in fault for proceeding at an excess in speed after each heard the fog signals of the other. *The Mamchioneal*, (C. C. A. 2d Cir. 1917) 243 Fed. 801, 156 C. C. A. 313.

Presumption and burden of proof.—The failure to observe this rule creates a presumption of fault and casts upon the vessel at fault the burden of proof to show even contributing fault in the other vessel. *The Easton*, (C. C. A. 2d Cir. 1917) 239 Fed. 859, 152 C. C. A. 643.

Sailing vessel.—This article applies to sailing vessels as well as steam vessels. *The Oceania Vance*, (C. C. A. 9th Cir. 1916) 233 Fed. 77, 147 C. C. A. 147.

Vol. II, p. 178, art. 18, rule I.

Burden of proof.—A departure from this rule puts on the boat attempting to justify it, the burden of establishing that the other boat assented by proper signals to the departure. *The Mercer*, (C. C. A. 2d Cir. 1916) 234 Fed. 259, 148 C. C. A. 161.

Vol. II, p. 179, rule V.

Signal given at time too far past.—This rule was considered in *The Daniel Willard*, (C. C. A. 2d Cir. 1916) 235 Fed. 112, 148 C. C. A. 606, wherein it appeared that a steamer on leaving her pier passed out into the river on the north side of a long pier which completely shut off her view from the south and it was held that because of her failure to go at moderate speed or to give warning to other vessels after having given her slip signal, when leaving her own pier nearly 1,300 feet from the end of the long pier, she negligently violated this rule and was in fault for a collision with another vessel which was approaching from the south.

Vol. II, p. 179, rule VIII.

Violation of rule.—In *The James L. Morgan*, (C. C. A. 2d Cir. 1915) 225 Fed. 34, 140 C. C. A. 360, it appeared that a steam lighter was passing down a river, and desiring to pass to the starboard side of a ferryboat, gave a one blast signal but was answered by a two blast signal. The steamer continued, and about the same time the ferryboat changed her

course to cross ahead of the steamer, which then went to starboard and came into collision with a tug which was also passing down. It was held that the steam lighter and ferryboat were both in fault for violation of this rule.

Vol. II, p. 179, rule IX.

Construction of rule.—The signals prescribed by this rule are only for vessels meeting, passing, and overtaking and do not relieve the vessel from the duty to give the signal prescribed by rule III. *The Virginian*, (C. C. A. 9th Cir. 1916) 238 Fed. 156, 151 C. C. A. 232.

Vol. II, p. 180, art. 25.

Rule not inflexible.—This is not an inflexible rule but is to be construed in connection with rule 27 and is to be followed only "when safe and practicable;" and, where it is manifest that adherence to it will produce disaster, it is not only the right, but the duty, of the navigator to disregard it. *The Santa Maria*, (D. C. Del. 1915) 227 Fed. 149. See also *The P. R. R. No. 32*, (C. C. A. 2d Cir. 1917) 240 Fed. 118, 153 C. C. A. 154.

Rights of moving vessels.—This article is a rule of the road defining the respective rights of moving vessels in narrow channels, and as against a vessel not proceeding but wrongfully lying at anchor, there the right of a traveling vessel is superior in any part of the channel. *The Belfast*, (D. C. Mass. 1914) 226 Fed. 362.

East River.—The East River is not a "narrow channel" within the meaning of this article. *The Wrestler*, (C. C. A. 2d Cir. 1916) 232 Fed. 448, 146 C. C. A. 442.

President Roads.—President Roads and its approaches in Boston Harbor are to

be regarded, generally speaking, as a "narrow channel" within the meaning of this article. *The Vera*, (D. C. Mass. 1914) 224 Fed. 998, *affirming* (C. C. A. 1st Cir. 1915) 226 Fed. 369, 141 C. C. A. 199.

Vol. II, p. 181, art. 27.

Special circumstances.—The steering and sailing rules apply to vessels navigating on steady courses. Where one of them is maneuvering merely, as for instance to get into or out of a dock, or winding around to get on her course, the situation is one of special circumstances, within the meaning of this article. *The John Rugge*, (C. C. A. 2d Cir. 1916) 234 Fed. 861, 148 C. C. A. 459.

In *The William A. Jamison*, (C. C. A. 2d Cir. 1917) 241 Fed. 950, 154 C. C. A. 586, it appeared that a tug was navigating near the ends of piers, while another tug was bringing barges to make up its tow, and it was held that the case was one of special circumstances within the meaning of this article. To the same effect see *The Washington*, (C. C. A. 2d Cir. 1917) 241 Fed. 952, 154 C. C. A. 588.

Vol. II, p. 196, rule twenty-two.

Duty of overtaking vessel.—Under this rule the overtaking vessel has the right to overtake and pass another if it can do so with safety to both; it must be its own judge of safety and assumes all risks except those due to the fault of the vessel overtaken, and a reply of the latter to a passing signal of an overtaking vessel is no more than an assent by it to what the overtaking vessel proposes to do at its own risk. *Atlas Transp. Co. v. Lee Line Steamers*, (C. C. A. 8th Cir. 1916) 235 Fed. 492, 149 C. C. A. 38.

COMMERCE DEPARTMENT

Vol. X, p. 63, sec. 10.

Authority of Secretary.—The transfer made by this Act does not give to the Secretary of Commerce any greater power or authority, with respect of the subjects mentioned in this section, than that previously conferred on the Secretary of the Treasury. The practice of the depart-

ment with respect of the remission or mitigation of fines, penalties or forfeitures is the same as that previously exercised by the Secretary of the Treasury under the advice of the Attorney-General. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

CONGRESS

1912 Supp., p. 43, sec. 1.

Effect on referendum of state Act.—There is nothing in this Act preventing the people of a state from reserving the right to approve or disapprove by referendum a state Act redistricting the state

for the purpose of congressional elections. *Davis v. Hildebrant*, (1916) 241 U. S. 565, 36 S. Ct. 708, 60 U. S. (L. ed.) 1172, *affirming* (1916) 94 Ohio St. 154, 114 N. E. 255.

CONSPIRACY

Vol. II, p. 247, sec. 5440.

Failure to accomplish the purpose of the conspiracy does not deprive it of criminality. *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) 215.

Corruption of congressional or presidential election.—A conspiracy to bribe voters at a general election within a state where presidential electors, a United States senator, and representatives in Congress are to be chosen, is not a conspiracy to commit an offense or to defraud the United States within the meaning of this section. *U. S. v. Bathgate*, (1918) 246 U. S. 220, 38 S. Ct. 269, 62 U. S. (L. ed.) 296, *following U. S. v. Gradwell*, (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857, which *affirmed* (D. C. R. I. 1916) 234 Fed. 446, and *U. S. v. O'Toole*, (S. D. W. Va. 1916) 236 Fed. 993.

Overt acts.—“Since the decisions in *Hyde v. U. S.*, [1912] 225 U. S. 347, 32 S. Ct. 793, 56 U. S. (L. ed.) 1114, Ann. Cas. 1914A 614, and *Brown v. Elliott*, [1912] 225 U. S. 392, 32 S. Ct. 812, 56 U. S. (L. ed.) 1136, the overt act has become an essential ingredient of the statutory offense, and may be the sole basis of local jurisdiction. It must be something more than evidence of a conspiracy; thus a complete confession of a conspiracy would not be equivalent to an overt act, which must constitute execution, or part execution. Apparently it may be the act which completes the offense of defrauding, or an act so near the completion of the offense as to constitute an attempt, or an act so remote as not to amount to an attempt; but at least it must be a step toward execution. Whether a certain act was in pursuance of the conspiracy might, of course, depend entirely upon what the conspiracy was, and upon whether the parties conspired to accomplish their purpose by the means alleged. See *Hyde v. U. S.*, [1912] 225 U. S. 347, 375, 376, 32 S. Ct. 793, 56

U. S. (L. ed.) 1114, Ann. Cas. 1914A 614.” *Tillinghast v. Richards*, (D. C. R. I. 1915) 225 Fed. 226.

“Overt acts” may be innocent acts in and of themselves, or criminal acts in their very nature or by virtue of some statute of the United States. *U. S. v. Rogers*, (N. D. N. Y. 1915) 226 Fed. 512.

“It is not necessary that each conspirator participate in each step or stage of the common general design. One of them may do one thing; another, another. Some may take major parts, while the participation of others may be in a minor degree.” *Lew Moy v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 50, 150 C. C. A. 252.

Conspiracy to commit a crime.—*In general*.—There can be no punishable conspiracy to violate a penal statute which is unconstitutional. *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

To commit common-law crime.—It is an indictable offense at common law to counsel and solicit a person subject to registration not to register under the Selective Draft Act of May 18, 1917, § 5, in WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *ante*, p. 1018. While no statute of the United States makes such solicitation criminal, a conspiracy to commit the said common-law offense is punishable as a conspiracy to commit “any offense against the United States” under this section. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

Subornation of perjury.—It is an indictable offense under this statute to conspire to commit subornation of perjury (see PENAL LAWS, 1909 Supp., p. 438, § 126) in connection with soldiers' declaratory statements, to be filed by defendant as agent covering public lands under the Homestead Law, the perjury set forth in the indictment consisting in false swearing before notaries public and clerks of state courts to declaratory

statements, although an affidavit to such statement is not required by statute, but by a regulation of the commissioner of the general land office, promulgated with the approval of the Secretary of the Interior. *U. S. v. Morehead*, (1917) 243 U. S. 607, 37 S. Ct. 458, 61 U. S. (L. ed.) 926.

To violate Peonage Abolition Act.—A defendant cannot be guilty of conspiracy to violate PENAL LAWS, § 269, in 1909 Supp., p. 480 (re-enacting R. S. sec. 5526, in KIDNAPPING, vol. 4; p. 774) by conspiring to return a person to a condition of peonage, if the condition contemplated was not that of "peonage" as the latter term has been authoritatively defined. *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607.

Violation of national bank laws.—On an indictment for conspiracy to obstruct and misapply the funds of a national bank in violation of R. S. sec. 5209, in title NATIONAL BANKS, vol. 6, p. 770, if the defendants conspired to get the moneys of the bank and committed an overt act in furtherance of such conspiracy, they would be guilty even if they believed the moneys received from a co-conspirator, who was an employee of the bank, were his own moneys. *Oppenheim v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 625, 154 C. C. A. 383.

Violation of Interstate Commerce Law.—An indictment will lie under this section for conspiracy to violate section 6 of the Interstate Commerce Act as amended, in INTERSTATE COMMERCE, 1909 Supp., p. 260, by the granting of unlawful rebates. *U. S. v. Grand Trunk R. Co.*, (W. D. N. Y. 1910) 225 Fed. 383.

Conspiracy to defraud—In general.—"It is well settled that these words ["in any manner," etc.] are broad enough to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of the government." *U. S. v. Gradwell*, (D. C. R. I. 1916) 234 Fed. 446, judgment affirmed (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857.

Conspiracy to defraud—Not limited to property rights.—The United States was entitled to have persons subject to registration under section 5 of the Selective Service Act of May 18, 1917, *ante*, this volume, at p. 1018, perform their duty and register according to law; and a conspiracy to prevent their doing so was punishable as a conspiracy to defraud the United States. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

To defraud individual.—Although the government absolutely owns the Panama Railroad Company, and is the only person profiting or losing by its activities, still the railroad company sues and is sued just like any other corporation, in its own name; and a conspiracy to sell to the company goods deficient in quality is not a conspiracy to defraud the United

States. *Salas v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 842, 148 C. C. A. 440.

Limitation.—In *Stager v. U. S.*, (C. C. A. 2d Cir. 1916) 233 Fed. 510, 147 C. C. A. 396, the court said that, while the statute of limitations would be a bar to the prosecution in the instant case if nothing had been done since the date of the original conspiracy, "the overt acts set forth in the indictment and proved would show a continuance of the conspiracy sufficient to take the case out of the statute of limitations."

Venue of federal prosecution.—In view of this section and of R. S. sec. 731, now embodied in Judicial Code, § 42, 1912 Supp., p. 151, prosecutions for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act was done to effectuate the object of the conspiracy. *Shea v. U. S.*, (C. C. A. 6th Cir. 1916) 236 Fed. 97, 149 C. C. A. 307, applying that rule in sustaining a prosecution for conspiracy to violate section 213 of PENAL LAWS, 1909 Supp., p. 463.

Where a conspiracy was conceived in Panama, the payment of certain drafts in New York, which were the property of the banks in which they were deposited, and not of the conspirators, was held not to be an overt act that would sustain a prosecution in the District Court for New York under Judicial Code, § 42, 1912 Supp., p. 151. *Salas v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 842, 148 C. C. A. 440.

Indictments in general—Sufficiency in general.—"The decisions agree that certainty to a common intent is all that is necessary. The conspiracy or unlawful combination is the gist of the offense, and certainty to a common intent, sufficient to identify the offense which the defendants conspired to commit, is all that is requisite in stating the object of the conspiracy." *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

To insure the validity of an indictment under this section it "must contain a definite charge of conspiracy either to defraud the United States, or to commit an offense against the United States, and an averment of an overt act to constitute the offense." *U. S. v. Grand Trunk R. Co.*, (W. D. N. Y. 1915) 225 Fed. 283.

Evidential matters.—"The indictment is sufficient if it advise the defendants of the nature and cause of the accusations against them, with such particularity as to enable them to prepare the defense. *Mark Yick Hee v. U. S.*, [C. C. A. 2d Cir. 1915] 223 Fed. 732, 139 C. C. A. 262." *U. S. v. United States Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

Charging the conspiracy.—"As was held by the Supreme Court in a recent case, *Joplin Mercantile Co. v. U. S.*, [1915] 236 U. S. 531, 35 S. Ct. 291, 59 U. S. (L. ed.) 705, February 23, 1915, the plan of the

conspiracy must be found in the clause of the indictment which sets it forth. It cannot be enlarged by the overt acts alleged." *Tillinghast v. Richards*, (D. C. R. I. 1915) 225 Fed. 226.

Charging overt acts.—It is indispensable to a valid indictment under this section that it shall charge an overt act. *Harrison v. Moyer*, (N. D. Ga. 1915) 224 Fed. 224; *U. S. v. Rogers*, (N. D. N. Y. 1915) 226 Fed. 512. But it is sufficient to state the overt act without alleging the manner in which it tended to effect the purposes contemplated. *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

The fact that the overt acts set forth in an indictment were innocent and commonplace, when unconnected with the conspiracy, does not invalidate the indictment where they were done pursuant to a conspiracy and to effect an unlawful purpose. *U. S. v. Grand Trunk R. Co.*, (W. D. N. Y. 1915) 225 Fed. 283.

In an indictment for conspiracy to conceal property of a bankrupt from the trustee in bankruptcy, an allegation that certain property "was thereafter concealed" from the trustee is ineffective as an averment of an overt act, if it be not alleged that such concealment was by the defendants. *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741.

A conspiracy count in an indictment is not bad for the reason that, in charging overt acts, it appears that the crime which the defendants conspired to commit was actually committed by them. *U. S. v. Rogers*, (N. D. N. Y. 1915) 226 Fed. 512.

Only one overt act is essential to constitute a punishable conspiracy to commit an offense against the United States, and if one overt act is sufficiently charged a demurrer to the whole count cannot be sustained, whatever may be the deficiencies in other charges of overt acts. *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741.

In *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741, a demurrer to an indictment for conspiracy to conceal certain property in anticipation of bankruptcy was overruled.

In *U. S. v. Orr*, (D. C. R. I. 1916) 233 Fed. 717, the court said: "While the allegation of overt acts is unnecessarily voluminous, as is usual in these cases, and while it may be doubtful if all of the acts alleged can properly be regarded as overt acts, yet as only one overt act is essential, and as the indictment properly charges several, the indictment is not demurrable, even should other allegations be subject to objection for insufficiency or as surplusage."

Indictment for conspiracy to commit offense—Sufficiency in general.—Where defendants are indicted in one count for the commission of an offense, and in an-

other count for conspiracy to commit the offense set forth in the first count, the count for conspiracy falls if the other count is found insufficient. *Spear v. U. S.*, (C. C. A. 8th Cir. 1916) 228 Fed. 485, 143 C. C. A. 67.

In *U. S. v. Gradwell*, (R. I. 1916) 234 Fed. 446, judgment *affirmed* (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857, the court held that, even if it be a crime to conspire to corrupt an election for a representative in Congress, "the indictment is so vague, uncertain, insufficient, and duplicitous in its allegations that the defendants are not sufficiently apprised of the nature of the charge against them to enable them to prepare their defense thereto," and a demurrer was sustained.

Certainty in stating object of conspiracy.—"It is not essential to set forth the offense which is the object of the conspiracy with the same certainty and strictness as in an indictment for the substantive offense. *U. S. v. D'Arcy*, (D. C. R. I. 1916) 243 Fed. 739, also holding that "an indictment charging conspiracy to commit an offense need not negative exceptions found in the statute which defines the offense that is the object of the conspiracy."

Duplicity.—"When, in charging certain defendants with the commission of a crime, such as conspiracy, it becomes necessary to set out that one of them committed another crime, the count cannot be held bad for duplicity." *U. S. v. Rogers*, (N. D. N. Y. 1915) 226 Fed. 512.

Tenor of written instrument.—In an indictment for conspiracy to prevent persons from registering under the Selective Draft Act of May 18, 1917, § 5, in WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *ante*, this volume, p. 1018, the failure to incorporate into the indictment an exact copy of the statement, the publication of which was alleged as an overt act done in pursuance of the conspiracy, the indictment containing a translation of such statement, was not a good ground of demurrer. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

Description of offense contemplated.—"In all charges of conspiracy, the conspiracy itself is the gist of the offense, and where a conspiracy is charged to violate the laws of the United States, if the conspiracy be specifically alleged, it is not necessary to allege the details of the law of the United States to be violated with the accuracy it would be if the charge were directly of the violation of the law of the United States, and not of the conspiracy to violate it." *Lew Moy v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 50, 150 C. C. A. 252.

Certainty to a common intent sufficient to identify the offense which the defendants conspired to commit is all that is required. *Aczel v. U. S.*, (C. C. A. 7th

Cir. 1916) 232 Fed. 652, 146 C. C. A. 578.

Setting on foot a military enterprise.—In *U. S. v. Tauscher*, (S. D. N. Y. 1916) 233 Fed. 597, on demurrer to an indictment, the latter was held sufficient to charge a conspiracy to set on foot a "military enterprise" within the meaning of that term as used in section 13 of PENAL LAWS, 1909 Supp., p. 408.

In *U. S. v. Bopp*, (N. D. Cal. 1916) 230 Fed. 723, a demurrer to an indictment for conspiracy to commit the offense denounced by section 13 of PENAL LAWS, 1909 Supp., p. 408, was sustained for insufficiency of the averments.

Scheme to defraud by use of mails.—

In *McKelvey v. U. S.*, (C. C. A. 9th Cir. 1917) 241 Fed. 801, 154 C. C. A. 503, the first clause of the indictment made the direct charge that the conspirators, to accomplish and effect the conspiracy, conspired to commit acts made an offense by section 215, in PENAL LAWS, 1909 Supp., p. 464. The indictment then proceeded to charge a scheme to defraud certain persons, and alleged that it was a part of said conspiracy to use the mails and the post office establishment of the United States for the purpose of effecting and carrying out that conspiracy. Holding that the indictment was sufficient, the court said that "this last charge is not the allegation of an isolated fact, or a mere recital or conclusion of the pleader, but a direct and positive charge that the use of the mails and post office establishment formed a part of, and was the essential act of, the conspiracy to commit an offense against the United States."

In *U. S. v. Aczel*, (D. C. Ind. 1915) 219 Fed. 917, overruling a demurrer to an indictment for conspiracy to violate section 215, cited in the last preceding paragraph, the court said: "It is to be observed that by section 215 Congress does not attempt to punish the perpetration of the scheme or artifice to defraud, whether such scheme or artifice be a crime against the state or the United States. It merely prohibits the use of the mails 'for the purpose of executing such scheme or artifice, or attempting so to do.' The conspiracy or combination is properly averred in this count, and the only question that can arise on it is whether the acts which the defendants are charged with conspiring to do constitute the offense denounced by section 215."

Where an indictment charged "that the defendants . . . unlawfully, etc., conspired, etc., together . . . for the purpose of executing the said scheme and artifice to defraud . . . and attempting to do so, to place and cause to be placed letters in the post office," this was a sufficient averment of a conspiracy to use the mails in execution of the alleged scheme to defraud. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1,

156 C. C. A. 133, citing *Stokes v. U. S.*, (1895) 157 U. S. 187, 15 S. Ct. 617, 39 U. S. (L. ed.) 667, and *Emanuel v. U. S.*, (1912) 196 Fed. 317, 116 C. C. A. 137.

To violate Harrison Opium Act.—An indictment charging conspiracy to obtain certain drugs for purposes other than those specified in the Harrison Opium Act of Dec. 17, 1914, 1916 Supp., p. 101, need not set forth specifically what was the wrongful object or purpose. *U. S. v. D'Arcy*, (D. C. R. I. 1916) 243 Fed. 739, holding also that, upon reading the indictment as a whole, it sufficiently fixed the locus of the overt acts, although the particular paragraphs setting forth the overt acts contained no allegation of place.

To violate Espionage Act.—In *U. S. v. Pierce*, (N. D. N. Y. 1917) 245 Fed. 878, the indictment there quoted in part was held sufficient to charge a conspiracy to violate the so-called Espionage Act of June 15, 1917, ch. 30, § 3, in CRIMINAL LAW, ante, this volume, p. 122.

Violation of Bankruptcy Act.—In *Frankfurt v. U. S.*, (C. C. A. 5th Cir. 1916) 231 Fed. 903, 146 C. C. A. 99, holding that a count in an indictment sufficiently charged a conspiracy to conceal the property of a bankrupt in violation of section 29b of the Bankruptcy Act of 1898 in vol. I, p. 605, the court said: "That count is very similar to the indictment which was passed on in the case of *Cohen v. U. S.*, [C. C. A. 2d Cir. 1907] 157 Fed. 651, 85 C. C. A. 113; [1907] 207 U. S. 596, 28 Stat. 261, 52 U. S. (L. ed.) 357, with the exception that in the instant case the alleged bankrupt was a firm or partnership, while in the *Cohen Case* the bankrupt was a corporation."

An indictment charging a conspiracy in anticipation of involuntary bankruptcy to conceal property from a trustee subsequently to be appointed, was sufficient without an allegation that the alleged anticipation of bankruptcy had any basis. *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741, where the court was also of opinion that it was "wholly immaterial whether the anticipated bankruptcy was to be brought about through voluntary or involuntary proceedings," citing *Roukous v. U. S.*, (C. C. A. 1st Cir. 1912) 195 Fed. 353, 115 C. C. A. 255.

In *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741, on an indictment charging a conspiracy in anticipation of involuntary bankruptcy to conceal property from a trustee thereafter to be appointed, a demurrer on the ground that the description of the property to be concealed was insufficient was overruled.

In *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 746, the indictment charged that the defendant bankrupts conspired to make and file before a referee in bank-

ruptcy a false account of the amount of their assets and liabilities, and the single overt act charged was the filing of a schedule which the defendants "knew well to be false." A demurrer to the indictment was sustained, the court saying: "There is no allegation that the schedule filed was false, or to show wherein it was false; but merely the words 'knew well to be false.' This has been held insufficient. *Bartlett v. U. S.*, [C. C. A. 9th Cir. 1901] 106 Fed. 884, 885, 46 C. C. A. 19; *Boren v. U. S.*, [C. C. A. 9th Cir. 1906] 144 Fed. 801, 803, 75 C. C. A. 531. Unless it was false the filing of the schedule was not an overt act." The court also said the allegation of conspiracy was probably insufficient on account of the failure to set forth the elements of the offense defined in section 29b (2) of the Bankruptcy Act."

In *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 741, an indictment for conspiracy to conceal property of a bankrupt from a trustee in bankruptcy, an objection on demurrer that the allegations of ownership of the property were inconsistent was overruled.

Unlawful importation of opium.—In *Shepard v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 73, 149 C. C. A. 283, affirming a conviction under an indictment for conspiracy to violate section 2 of the Act of Jan. 17, 1914, ch. 9, in IMPORTS AND EXPORTS, 1916 Supp., p. 62, by fraudulently importing and bringing into the United States certain opium, the indictment did not follow the letter of the statute, but omitted the words, "after importation," preceding the words, "knowing the same to have been imported contrary to law," and the defendant demurred for uncertainty, it was held that the demurrer was properly overruled.

"Charging of offenses in the conjunctive which are in the statute in the disjunctive is in accordance with a well-known rule of criminal pleading." *Shepard v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 73, 149 C. C. A. 283, holding an indictment sufficient where this method of pleading was adopted in describing, as the offense which the defendants were alleged to have conspired to commit, the offense specified in section 2 of the Act of Jan. 17, 1914, ch. 9, in IMPORTS AND EXPORTS, 1916 Supp., p. 62.

Unlawfully bringing in Chinese.—In *U. S. v. Dahl*, (W. D. Wash. 1915) 225 Fed. 909, an indictment for conspiracy to violate section 11 of the Chinese Exclusion Act of 1882, as amended (CHINESE EXCLUSION, vol. 2, p. 782), the court said: "The offense charged is not of itself a crime under the Exclusion Act; hence the acts need not be charged with the same particularity. Reason suggests that in a charge of con-

spiracy to commit a crime, while the particular crime must be alleged, it need not be set out with the same particularity in an indictment as a charge for the crime itself. 5 Ruling Case Law, 1083. This conclusion finds support in the recent decision of the Supreme Court, in which it held that a conspiracy to commit a crime under section 37 of the Criminal Code may be prosecuted, even though the time for prosecution of the crime itself has expired, if limitation under the conspiracy section has not elapsed," proceeding to quote from the opinion in *U. S. v. Rabinowich*, (1915) 238 U. S. 78, 35 S. Ct. 682, 59 U. S. (L. ed.) 1211.

An indictment for conspiracy to violate section 11 of the Chinese Exclusion Act of 1882, as amended (in CHINESE EXCLUSION, vol. 2, p. 782), which charged that the defendants conspired together "and together with divers other persons to the grand jurors unknown" was not subject to attack on the ground that the conspiracy could not be entered into unless it included persons who were excluded by the Act. *U. S. v. Dahl*, (W. D. Wash. 1915) 225 Fed. 909.

An indictment for conspiracy alleging, in substance, that it was a general conspiracy to bring in Chinese aliens not lawfully entitled to enter the United States was not open to objection because the names of the persons thus to be brought into the United States were not stated. *U. S. v. Dahl*, (W. D. Wash. 1915) 225 Fed. 909.

Interstate shipment of intoxicating liquors.—In *Witte v. Shelton*, (C. C. A. 8th Cir. 1917) 240 Fed. 265, 153 C. C. A. 191, where the defendant was indicted for conspiracy to violate section 238, PENAL LAWS, 1909 Supp., p. 472, and after a hearing before a United States commissioner at which the indictment, the testimony of the prisoner, and other evidence was introduced and considered by him, an order of deportation to another district for trial was made, it was held that this order was sustained by the averments and evidence.

Corporations contributing money for political elections.—An indictment for conspiracy to violate section 83 of PENAL LAWS, 1909 Supp., p. 427, forbidding corporations to contribute money for political elections, was examined and pronounced sufficient in *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

Indictment for conspiracy to defraud.—Defrauding of customs duties.—In *Smith v. U. S.*, (C. C. A. 9th Cir. 1916) 231 Fed. 25, 145 C. C. A. 213, an indictment charged that the defendants conspired to defraud the United States out of a large part of the import duties on coal imported and brought into the United States by the Western Fuel Company "by making and causing to be made false weights and

false and fraudulent returns of weights of such cargoes," etc. Affirming a conviction under the indictment the court said: "In view of these facts, and of the further fact that the plaintiffs in error were not misled to their prejudice, we think the charge, though general in terms and entirely lacking in particulars, was sufficient." But the court also said: "It must be conceded that the charge is very general, and we cannot yield our assent to the claim on the part of the government that an indictment in cases such as this need only charge in general terms a combination to defraud the United States. *Keck v. U. S.*, (1899) 172 U. S. 434, 19 S. Ct. 254, 43 U. S. (L. ed.) 505."

Defrauding of internal revenue.—In *U. S. v. Orr*, (D. C. R. I. 1915) 223 Fed. 220, overruling a demurrer to an indictment the court said: "The indictment charges that the defendants conspired to defraud the United States of a large sum of money to become due for internal revenue taxes upon oleomargarine. The mode in which the taxes were to become due is set forth at considerable length, and also the mode in which the United States was to be defrauded; i. e., by the removal of the oleomargarine from the place of manufacture, for sale, etc., without coupon stamps representing and denoting the payment of a tax, and without such tax having been paid or secured by any person. It seems sufficiently certain that the conspiracy contemplated the production of a taxable commodity, acts upon which there would become due to the United States taxes thereon, the noncompliance with the provisions of law for affixing stamps, and the nonpayment of taxes by anybody, and the defrauding of the United States of the taxes to which it would become entitled upon the facts alleged."

In *Tillinghast v. Richards*, (D. C. R. I. (1915) 225 Fed. 226, an indictment for conspiracy to defraud the United States at Providence of sums to become due for internal revenue taxes on oleomargarine, by the unlawful removal of colored oleomargarine at Providence, was held insufficient.

In an indictment for conspiracy to defraud the United States of sums to become due for internal revenue taxes on oleomargarine not free from artificial coloration, since the object of the conspiracy was to defraud by an act prohibited by law, it was not essential to allege that the defrauding was to be accomplished by deceit, misrepresentation, or concealment, as the intent to defraud was supplied by the allegation that the prohibited act was to be done unlawfully and knowingly. *Tillinghast v. Richards*, (D. C. R. I. 1915) 225 Fed. 226.

An indictment for conspiracy to defraud the United States of taxes on arti-

ficial colored oleomargarine was held sufficient on demurrer, where it charged a conspiracy which included as a part of it the intended removal of the goods from the place of manufacture, the allegation that this was done being a sufficient allegation of the doing of an act to effect the object of the conspiracy as defined and charged in the indictment. It was "unnecessary to allege facts showing that the scheme was actually completed, or that the United States was actually defrauded." *U. S. v. Orr*, (D. C. R. I. 1916) 233 Fed. 717.

Evidence—Knowledge, motive or intent.—Where a defendant charged with conspiracy to ship misbranded bags of coffee denied all knowledge of the misbranding and asserted that it was "put over him" by faithless servants in his office, acting secretly with brokers, evidence was admissible on behalf of the government of other orders that had passed through his office for the misbranding of coffee, as a circumstance to be considered by the jury in determining whether he had knowledge of such nefarious features in the sale of coffee. *Mitchell v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 357, 143 C. C. A. 477.

A defendant charged with conspiracy to defraud may properly testify to the absence of fraudulent intent and motive on his part. *Sparks v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 777, 154 C. C. A. 479.

On the trial of an indictment for conspiracy to violate section 215 of PENAL LAWS, 1909 Supp., p. 464, partly by means of suits and threatened suits for alleged disgraceful acts, evidence was admissible for the prosecution that the defendant had, at about the same time, instituted other suits of a like character and for a like purpose, from which the jury might infer the intent with which the suits involved in the prosecution were being brought or threatened. *McKelvey v. U. S.*, (C. C. A. 9th Cir. 1917) 241 Fed. 801, 154 C. C. A. 503.

Intent to use the mails, in violation of PENAL LAWS, 1909 Supp., p. 464, § 215, is sufficiently shown by evidence that in the execution of the conspiracy the use of the mails was indispensable. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 133.

Other offenses.—On a prosecution for conspiracy to violate section 213 of PENAL LAWS, 1909 Supp., p. 463, and defraud by fake betting on pretended horse races, evidence of other fraudulent acts by defendants at or about the same time, terminating in fake horse-race betting, were admissible as bearing upon defendants' motives or intent, though such other acts were offenses in themselves, and were not precisely identical in character with those involved in the case on trial, except as they were means to the same end. *Shea*

v. U. S., (C. C. A. 6th Cir. 1916) 236 Fed. 97, 149 C. C. A. 307.

On a prosecution for conspiracy to defraud by using the United States mails in violation of section 213, cited in the last preceding paragraph, it was held that evidence of an alleged fraudulent mining-stock scheme had no direct tendency to prove a scheme to defraud through fictitious horse-race bets, the latter being the offense charged in the indictment, and that the admission of such evidence was prejudicial error. *Shea v. U. S.*, (C. C. A. 6th Cir. 1916) 236 Fed. 97, 149 C. C. A. 307.

In *Huff v. U. S.*, (C. C. A. 5th Cir. 1916) 228 Fed. 892, 143 C. C. A. 290, defendants were indicted for conspiracy to forcibly arrest one John Westmoreland for the purpose and with intent to hold him in a condition of peonage and to compel him to work for one of them to pay a debt. The government offered evidence tending strongly to prove concerted action of the defendants in arresting, whipping, and returning John Westmoreland to the employer whose employment he had deserted. On the trial the plaintiffs in error put in evidence attacking the character and reputation of the prosecuting witness John Westmoreland, evidence tending to prove an alibi for some of the accused on trial and the good character and standing of all the defendants as a defense to the indictment. A judgment of conviction was affirmed.

"Whatever may be the view of the courts as to the occasion when and the extent to which testimony as to similar transactions are admissible . . . the transaction must always be similar or substantially so." *Erber v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 221, 148 C. C. A. 123.

Variance.—In *Bernstein v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 923, 151 C. C. A. 657, holding that there was no fatal variance where an indictment charged the presentation of a false claim in a bankruptcy proceeding, and the proof was of its presentation in a composition, the court said: "Even if such a refined distinction be allowed, it cannot be doubted that presentation and proof of a claim for purposes of a composition is presentation and proof for all purposes in the bankruptcy proceedings."

Where an indictment charged two named defendants with conspiring among themselves and with divers other persons unknown, it was competent for the jury to acquit either defendant and at the same time convict the other of conspiracy with witnesses who testified before the grand jury, but were not indicted, as the mere fact that they so testified did not show that the grand jury knew them to be conspirators. *Mitchell v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 357, 143 C. C. A. 477.

In *Bernstein v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 923, 151 C. C. A. 657, affirming a conviction on an indictment for conspiracy to present and prove a false claim against a bankrupt, it appeared that the indictment charged both the conspiracy and the overt act in the city of Richmond. The proof was that the conspiracy was entered into in the city of Philadelphia, and that only the overt act of presenting and proving the false claim was committed in the city of Richmond. Holding that this was not a fatal variance, the court said: "The point is settled beyond dispute by *Hyde v. U. S.*, [1912] 225 U. S. 347, 32 S. Ct. 793, 56 U. S. (L. ed.) 1114, Ann. Cas. 1914A 614, wherein the court held in effect that a conspiracy formed in California was to be considered extended into the District of Columbia, where the overt act in pursuance of it was committed."

Acts and declarations of co-conspirators. "Where a conspiracy is once established acts and admissions of any one of the conspirators in pursuance of the conspiracy, and while it continues, are admissible against the others, upon the theory that the conspirators are agents for one another in the common enterprise. *Connecticut Mut. Life Ins. Co. v. Hilmon*, [1903] 188 U. S. at p. [208], 218, 23 S. Ct. 294, 47 U. S. (L. ed.) 446. But the preliminary question whether sufficient evidence of a conspiracy has been adduced must always be answered by the court in the affirmative or the general rule of evidence excluding hearsay will render an admission of one of the conspirators inadmissible against the others." *Stager v. U. S.*, (C. C. A. 2d Cir. 1916) 233 Fed. 510, 147 C. C. A. 396, holding that it was reversible error to admit a letter prejudicial to the defendant from an alleged co-conspirator to another co-conspirator, which was written at a time covered by no other or prior evidence showing the formation of a conspiracy than the letter itself.

Where "the alleged conspiracy manifestly was at an end," admissions or confessions by one defendant then under subpoena to appear before the grand jury were not admissible against his alleged co-conspirators. *Erber v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 221, 148 C. C. A. 123.

On a trial for conspiracy evidence of things said or done by some of the conspirators after the execution or abandonment of the conspiracy is not admissible against other defendants, and should not be received without expressly cautioning the jury that it must not be considered as against the latter. *Hendrey v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 5, 147 C. C. A. 75.

Weight and sufficiency.—Where defendants were indicted and tried for conspiracy to defraud by using the mails, in vio-

lation of section 215 of PENAL LAWS, 1909 Supp., p. 464, and the overt act charged was that the defendants deposited and caused to be deposited a certain letter in the post office, evidence that the defendant procured another person to mail said letter, though he may not have acted with knowledge so as to be guilty himself, supports the indictment. *Rose v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 357, 142 C. C. A. 53.

In *Gernert v. U. S.*, (C. C. A. 9th Cir. 1917) 240 Fed. 403, 153 C. C. A. 329, affirming a conviction of conspiring to use the mail in furtherance of a fraudulent scheme, the plaintiff in error contended that there was no evidence given in the case tending to show that he was connected with the alleged conspiracy, but the court set forth in full a letter from him to a business associate and a letter from the latter in reply making certain false statements precisely as requested, and said: "We agree with the attorney for the government that comment upon these letters is unnecessary."

In *Lew Moy v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 50, 150 C. C. A. 522, a prosecution for conspiracy to bring into the United States Chinese persons not lawfully entitled to enter or remain in the United States, the evidence against the defendants was held sufficient for the consideration of the jury.

Under an indictment charging in one count a conspiracy to violate section 215, cited in the last preceding paragraph, the government has to sustain a heavier burden of proof as to the intent of the conspirators than under other counts in the indictment charging a violation of said section 215; in order to sustain the charge of conspiracy, it is necessary to prove an intent, not only to defraud, but also to defraud by the use of the mails. *Farmer v. U. S.*, (C. C. A. 2d Cir. 1915) 223 Fed. 903, 139 C. C. A. 341.

In *Elder v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 84, 155 C. C. A. 614, the evidence was held sufficient to sustain a conviction of conspiracy to violate said section 215 in using the mails in furtherance of a scheme to defraud.

In *Schwartzberg v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 348, 154 C. C. A. 228, it was held that while the mail was used quite extensively by the defendants and in execution of fraud, the record showed that the main reliance of the defendants was upon the "quick tongue and fertility in falsehood" of one of them, and the

necessary intent, not proven by direct evidence, could not be inferred beyond a reasonable doubt, so that a conviction of conspiracy to violate said section 215 could not be sustained. See also where the evidence was held insufficient, *Farmer v. U. S.*, (C. C. A. 2d Cir. 1915) 223 Fed. 903, 139 C. C. A. 341, reversing a judgment of conviction.

Where there was a single sentence upon counts sustained by evidence, judgment was not reversed on the ground that another count was unsupported by evidence. *Brand v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 219, 149 C. C. A. 409.

Instructions.—Where the indictment clearly charged the overt acts as following the conspiracy and done to effect the object of the conspiracy, an instruction was sufficient which directed the jury to find the defendants guilty "if you find beyond a reasonable doubt that there was a conspiracy as charged in the indictment, and that the defendants now on trial were parties to that conspiracy, and that any one of the overt acts as charged in the indictment was committed as therein alleged. *Shepard v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 73, 149 C. C. A. 283, overruling the objection that the instruction did not state that the overt act must have been shown to have followed the conspiracy in point of time and must have been done to effect its object.

Verdict.—On a trial for conspiracy to commit an offense against the United States, the verdict "guilty of conspiracy," was a general and not a special verdict, and was to be understood as referring to the conspiracy charged in the indictment, and was sufficient. *Huff v. U. S.*, (C. C. A. 5th Cir. 1916) 228 Fed. 892, 143 C. C. A. 290.

Conviction.—In a prosecution for violation of PENAL LAWS, 1909 Supp., p. 464, § 215, on an indictment also containing counts for conspiracy to violate that section, where the conspiracy counts set forth as overt acts the mailing of letters, some of which appeared in the counts under said section 215, yet each of the conspiracy counts also set forth as overt acts the mailing of letters not set out in the counts under section 215, as the letters mailed in execution of the scheme, conviction on all the counts did not constitute a double conviction. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

COPYRIGHT

Vol. II, p. 274, sec. 3.

Chromos.—As chromos are plainly omitted from this section, they do not come under the provision relating to registration in the Patent Office. *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601.

1909 Supp., p. 81, sec. 1(b).

Right to novelize play.—The right to novelize a play was created by this section. Under the old copyright statute the right to novelize a play in such form as did not result in a "copy" was a right in the public domain and inhered in the first novelizer whether he were the author of the play, or another. *Fitch v. Young*, (S. D. N. Y. 1911) 230 Fed. 743.

Right of dramatization.—An exclusive right to dramatize a novel "for presentation on the stage" was held to mean an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, (S. D. N. Y. 1916) 232 Fed. 240, *affirmed* (C. C. A. 2d Cir. 1917) 239 Fed. 108, 151 C. C. A. 282.

Photo-play presentation.—The copyright of a dramatization covers a photo-play presentation of the same subject. *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

1909 Supp., p. 81, sec. 1(d).

Playright distinguished from copyright.—Under the old copyright statute the distinction between playright and copyright was recognized although printed publication would forfeit both and one statutory copyright would protect both. So, the author of a play could reserve his common-law playright from the assignment of the play, and the assignee could, by the necessary formalities on the printed play, create a statutory copyright held beneficially by the assignee. *Fitch v. Young*, (S. D. N. Y. 1911) 230 Fed. 743.

1909 Supp., p. 81, sec. 1(e).

"Performance for profit."—The performance of a copyrighted musical composition in the dining-room of a hotel or restaurant, open to guests without charge for admission to hear it, infringes the exclusive right of the owner of the copyright to perform the work publicly for profit. *Herbert v. Shanley Co.*, (1917) 242 U. S. 591, 37 S. Ct. 232, 61 U. S. (L. ed.) 511, *reversing* (C. C. A. 2d Cir. 1915) 221 Fed. 229, 136 C. C. A. 639, *reversing* (1915) 229 Fed. 340, 143 C. C. A. 460.

Construing this phrase in *Hubbell v.*

Royal Pastime Amusement Co., (S. D. N. Y. 1917) 242 Fed. 1002, the court said: "I am entirely satisfied that a semicolon should precede the words 'and for the purpose of public performance for profit.' This is borne out by a reading of the committee reports and a reading of the statute. [See article Statutes and Statutory Construction, vol. 1, par. 6, p. 50, as to the rules of construction where punctuation is involved.] If the semicolon is not inserted at the place above indicated, subdivision 'e' of section 1 does not seem to make sense. Eliminating the semicolon, the most, however, that the section amounts to is a protection in favor of those persons who do not perform publicly for profit the musical composition—as in the case of street parades, school, educational, or similar public occasions and exhibitions."

Musical composition.—A musical composition would seem, in connection with section 3 providing for the protection of all copyrightable component parts of the work copyrighted, to include both words and music. *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

Failure to file notice as defense.—"In order to compel the owner to make the license public by filing a notice in the office at Washington, the statute provides as a penalty that failure to file shall be a complete defense to any suit, action, or proceeding for any infringement of 'such copyright.' What does 'such copyright' refer to? Manifestly, as we think, some particular right to reproduce the musical work mechanically. Just how the reproduction is to be made, and whether it is to be confined to the music or shall extend to the words also, is in the first instance left for the owner to determine. But after he has determined it, and has granted a license to one person, he thereby opens the field to all others to do the same, or a similar, thing. If he license one person to reproduce both words and music by the phonograph method, other persons may reproduce them both by using the phonograph. If he license one person to reproduce the music by the automatic roll, others also may use the roll, but they do not thereby acquire the right to print the words. In brief, 'such copyright' means the particular right covering mechanical reproduction that happens to be in controversy—in the present case, the right to reproduce, not the words but the music, mechanically." *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

Object of provisos.—The object of the provisos in this section seems to be the prevention of monopoly or favoritism in granting the right to reproduce a musical work mechanically. If the owner authorize one person to reproduce the work mechanically, other persons also may reproduce it in a similar mechanical manner, subject to the payment of the statutory royalty. *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

1909 Supp., p. 83, sec. 5.

What may be copyrighted.—See the notes to 1914 Supp., p. 48, § 5, *infra*, p. 1183.

1909 Supp., p. 83, sec. 8.

Question of ownership of copyright.—The legal title to a copyright vests in the person in whose name the copyright is taken out. It may, however, be held by him in trust for the true owner, and the question of true ownership is one of fact, dependent upon the circumstances of the case. *Harms v. Stern*, (C. C. A. 2d Cir. 1915) 229 Fed. 42, 145 C. C. A. 2.

1909 Supp., p. 86, sec. 18.

Notice—Legality of name.—The proprietor of a copyright may use either his real name or an assumed name on his notice of copyright but the name must be legal where he uses it. So where a state statute (N. Y.) prohibits the use of a fictitious partnership name, and the copyright proprietor, instead of his own name, used that of a company of which he was not a member and which in fact did not exist, it was held that a suit for infringement would not lie under the notice of copyright in that form. *Haas v. Feist*, (S. D. N. Y. 1916) 234 Fed. 105.

1909 Supp., p. 86, sec. 20.

Effect of defective notice.—Where in a notice of copyright, the letter C enclosed in a circle as required by section 18, and affixed to a published illustration, was so defective as not to convey to any one the existence of a copyright, it was held, although there had been a technical and incidental infringement, that by reason of the improper and defective notice, no damages would be awarded against the infringers, but they would be enjoined only from the future use of the copyrighted illustration. *Alfred Decker Cohn Co. v. Etchison Hat Co.*, (E. D. Va. 1915) 225 Fed. 135.

Application of section.—For a case held to be within the application of this section, see *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601, holding a certain number of copyrighted chromos infringed although they were published without the copyright mark.

1909 Supp., p. 87, sec. 25.

What constitutes infringement.—See the notes to section 36, *infra*, this page.

1909 Supp., p. 91, sec. 36.

What constitutes infringement—Similarities in dramatic compositions.—Resemblances between two dramatic compositions in fundamental plot and minor and unimportant instances, does not involve infringement where the fundamental dramatic feature common to both, had long been common property. While copyright will of course protect the author who adds elements of literary value to an old plot, it will not prohibit the use by some one else of the same old plot without the particular embellishment. *Eichel v. Marcin*, (S. D. N. Y. 1913) 241 Fed. 404.

Mere similarities in plot and lines, developed from a common source and accounted for by reference to the common source, does not constitute infringement. *Bachman v. Belasco*, (C. C. A. 2d Cir. 1915) 224 Fed. 817, 140 C. C. A. 263, *affirming* (S. D. N. Y. 1913) 224 Fed. 815.

Dramatization of novel.—An exclusive right to dramatize a novel "for presentation on the stage" was held to mean an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, (S. D. N. Y. 1916) 232 Fed. 240, *affirmed* (C. C. A. 2d Cir. 1917) 239 Fed. 108, 151 C. C. A. 282.

The exhibition of a series of photographs of persons and things arranged on films as moving pictures, and so depicting the principal scenes of an author's work as to tell the story, is a dramatization of such work as held by the Supreme Court in *Kalem Co. v. Harper*, (1911) 222 U. S. 55, 32 S. Ct. 20, 56 U. S. (L. ed.) 92, Ann. Cas. 1913A 1285. And an agreement granting the exclusive right of dramatizing an author's work would include the right to make a "movie play" as well as a spoken play. But if a grant made by an agreement is limited as "for presentation on the stage," or is limited to one version only and that in a particular manner or prohibits any change in the manner of performance or text, the right of dramatization for a moving picture play would not be comprehended. *Harper v. Klaw*, (S. D. N. Y. 1916) 232 Fed. 609, where it held that an agreement authorizing the defendant to dramatize the novel "Ben Hur" and giving the "exclusive right of producing such dramatic version on the stage" did not confer on the defendant moving picture rights in the play and that its production in that mode and method would be an infringement of the plaintiff's copyright. The language of the agreement was held to be incapable of application to any

method of producing photo plays in commercial use and to be not only inconsistent with but repugnant to the thought of making "movies" out of "Ben Hur."

Second-hand books.—One may sell a second-hand copyrighted book for what it is. He may rebind or otherwise improve its condition or appearance for the purposes of a resale. But if he supplies missing parts by copying the maps and of reprinting portions of the original text and incorporates these reproduced parts with the old books, and sells them as the publications of the original publishers, it constitutes an infringement of copyright. *Ginn v. Apollo Pub. Co.*, (E. D. Pa. 1914) 215 Fed. 772.

A photograph of a street scene, held to be a proper subject of copyright, is infringed by a lantern slide reproduction. *Pagano v. Chas. Besseler Co.*, (S. D. N. Y. 1916) 234 Fed. 963.

Infringement of musical composition.—Where two compositions were considerably different both in theme and execution, except as to the particular phrase "I hear you calling me" and the music accompanying those words was practically identical in both compositions, it was held that the use of this similar phraseology and the similar bars of music was sufficient to warrant the charge of piracy and infringement of copyright. *Boosey v. Empire Music Co.*, (S. D. N. Y. 1915) 224 Fed. 646.

Bill or complaint—Misjoinder of parties plaintiff.—The misjoinder of a party plaintiff having no interest, and to whom no relief can be granted, renders the complaint multifarious and devoid of equity, and the complaint must be dismissed. *Tully v. Triangle Film Corp.*, (S. D. N. Y. 1916) 229 Fed. 297.

Exhibits.—In accordance with rule 2 of the Supreme Court adopted pursuant to section 25 (1909 Supp., p. 96) a copy of the work alleged to be infringed must accompany the complaint or its absence be explained. "It sometimes happens that redress by injunction in cases of this kind must be speedily obtained in order to prevent irreparable injury, and that the plaintiff may not have at hand a copy of the manuscript, whereas he can describe, for all practical purposes, the substance of the subject-matter of his copyrighted work; but the rule must be followed, and, if the work cannot be produced, satisfactory reasons for its absence must be presented." *Tully v. Triangle Film Corp.*, (S. D. N. Y. 1916) 229 Fed. 297.

Preliminary injunction.—Where the author of a story conferred the whole copyright privilege upon its publisher to hold the same for its own benefit as to serial publication and as trustee for him, the author, as to all other rights, and the publisher thereafter released motion picture rights in the story, it was held that a preliminary injunction against the pro-

ducers of the pictures was properly denied the author where there was no actual notice or sufficient evidence of constructive notice to them. "When one clothes another with apparent ownership, though actually as trustee, he cannot defeat the title of those who in good faith, for a valuable consideration and without notice deal with the trustee." *Brady v. Reliance Motion Picture Corp.*, (C. C. A. 2d Cir. 1916) 229 Fed. 137, 143 C. C. A. 413. See also *Brady v. Reliance Motion Picture Corp.*, (S. D. N. Y. 1916) 232 Fed. 259.

Where a novel and an alleged infringing photoplay had some marked similarities, but neither was wholly original, and the principal theme and many incidents were derived from common sources and the question of infringement was therefore by no means clear, a preliminary injunction was denied. *Bobbs-Merrill Co. v. Equitable Motion Pictures Corp.*, (S. D. N. Y. 1916) 232 Fed. 791.

Suspension of temporary injunction.—Where the sale of defendant's composition cannot interfere with the sale of plaintiff's composition by virtue of the inherent difference, generally speaking, of the tastes to which they appeal, and the case is therefore not one where the plaintiff's commercial exploitation of their composition is interfered with, but one which involves solely the rights under the statute, a temporary injunction will be suspended on the filing of a bond and periodical statements of sales, pending final hearing on appeal. *Boosey v. Empire Music Co.*, (S. D. N. Y. 1915) 224 Fed. 646.

Computation of profits recoverable.—In copyright cases under this section the plaintiff may show only the receipts, or debit side of the account, and put upon the defendant the burden of proving the cost of production, or the plaintiff may exact the penalty. *Ginn v. Apollo Pub. Co.*, (E. D. Pa. 1915) 228 Fed. 214.

1909 Supp., p. 91, sec. 40.

Counsel fees.—The allowance of counsel fees is a matter peculiarly within the discretion of the court awarding the same. *S. C. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629, wherein the court declined to disturb an award of counsel fees fixed by the trial judge.

1914 Supp., p. 48, sec. 5.

What may be copyrighted—An English translation of an original French play, with such modifications as the translator's ingenuity might suggest, is copyrightable. But such translator has no right to transfer into his adaptation, variations from and additions to the French play which were original with a prior translator who copyrighted his translation. *Stevenson v. Fox*, (S. D. N. Y. 1915) 226 Fed. 990.

A *manual of instruction*, illustrating, by designs and explanatory matter, the uses of a complicated mechanical toy, is copyrightable. *Meccano v. Wagner*, (S. D. Ohio 1916) 234 Fed. 912.

A *photograph of a street scene* is copyrightable when the result evidences originality in bringing out the proper setting for both animate and inanimate objects, with the adjunctive features of light, shade, position, etc. *Pagano v. Chas. Beseler Co.*, (S. D. N. Y. 1916) 234 Fed. 963.

Photo-play presentation.—The copyright of a dramatization covers a photograph presentation of the same subject. *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

Chromos are copyrightable and it makes no difference that they are intended for advertising articles of commerce. *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601.

What cannot be copyrighted.—*Title or name*.—"It is well settled that the owner of the thing copyrighted acquires through the copyright no property in the name by which it is designated." *Wilson v. Hecht*, (1915) 44 App. Cas. (D. C.) 33.

A *plan of medical instruction* illustrating practice in general use and embodying previous medical knowledge which was common property to any writer, is not copyrightable. *Chautauqua School of Nursing v. National School of Nursing*, (C. C. A. 2d Cir. 1916) 238 Fed. 151, 151 C. C. A. 227, *reversing* (W. D. N. Y. 1914) 211 Fed. 1014.

A *statue or structure* built for public free exhibition cannot be copyrighted. *Carns v. Keefe*, (D. C. Mont. 1917) 242 Fed. 745.

1914 Supp., p. 49, sec. 25.

What constitutes infringement.—See the notes to 1909 Supp. p. 91, § 36, *supra*, p. 1182.

1914 Supp., p. 49, sec. 25(b).

Purpose of section.—The language of this section is a growth of years, resulting from the efforts of Congress to avoid that strictness of construction which historically attaches to any statute inflicting penalties and to confer upon an injured copyright owner some pecuniary solace even when the rules of law render it difficult, if not impossible, as it often is, to prove damages or discover profits. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

Consolidation of suits.—Where one copyrights separately ten cuts, and finds each one of the ten infringed on separate days by the same newspaper, and then brings ten separate damage suits, on application to compel consolidation, the court would look into the facts and ascertain whether there were really ten controversies involving ten questions or

whether there was just the one dispute involving one question, and probably would consolidate or not, according as it decided this question. If these suits were consolidated upon a finding that they were really only one controversy and injury to the plaintiff's business, or if the plaintiff in the first place brought one consolidated suit, minimum damages as for one infringement would satisfy the statute. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Joint tortfeasors.—All parties who unite in an infringement are, under the statute, liable for the damages sustained by the owner of the copyright. *Gross v. Van Dyk Gravure Co.*, (C. C. A. 2d Cir. 1916) 230 Fed. 412, 144 C. C. A. 554. See also *Haas v. Feist*, (S. D. N. Y. 1916) 234 Fed. 105.

Quantum of damages.—The maximum and minimum limitations unquestionably apply to the "in lieu" damages. Whether they apply to the actual damages which may be proved and established, under the first part of this section, was mooted, but passed over, as not requiring decision in *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

In consolidated suits.—On a consolidated suit the statute may be satisfied by awarding the minimum damages as for one infringement. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Damages.—"Actual" and "in lieu."—"Actual" damages means "real" as opposed to "nominal." It means "existent" without precluding the thought of change. "In lieu" means in place of the thing modified by the quoted phrase. What a plaintiff is entitled to ask of the court in its discretion is something in place of his real—i. e., legally existent and legally ascertained damages. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

By the clause "in lieu of" this section contemplates an election or discretionary choice between actual damages and profits on the one side, and, on the other side, an assumed or somewhat arbitrary award of such damages as may be just. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Infringement under minimum damage clause.—"The 'infringement' which calls for minimum damages is that conduct of the defendant, whether being one act or many, which constitutes a connected and fairly unitary invasion of the proprietor's rights." *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Nominal damages.—Nominal damages may be awarded for proven infringement

where little or no actual injury appears. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

Computation of profits recoverable.— See note under 1909 Supp., p. 91, § 38, *supra*, p. 1182.

COSTS

Vol. II, p. 278, sec. 824.

"For each deposition," etc.—*Examination before commissioner*.—There is not a uniformity of opinion in the courts as to whether an examination before a commissioner shall be treated as a deposition under this section. See the original annotations. In *The Mary*, (W. D. Wash. 1916) 233 Fed. 121, on a motion to disallow proctor's fees on taking testimony before a court commissioner of 10 witnesses, the tax of \$2.50 was allowed as to all the witnesses except one, as to whom it was disallowed on the ground that his testimony was immaterial.

Disbursements for transcribing deposition.—The allowance of disbursements for transcribing a deposition pertains directly to testimony intended to be used in the case, and when the deposition has been taken in good faith and under apparent necessity therefor, the fee for transcribing it so that it can be used may be allowed in the discretion of the court, even though the witness himself is produced and for this reason the deposition is not used. *Alaska Steamship Co. v. Gilbert*, (C. C. A. 9th Cir. 1916) 236 Fed. 715, 150 C. C. A. 47.

"Admitted in evidence in a cause."—In respect to depositions in the admiralty court, no proctor's fee is recoverable in a cause unless the deposition is admitted in evidence. *Alaska Steamship Co. v. Gilbert*, (C. C. A. 9th Cir. 1916) 236 Fed. 715, 150 C. C. A. 47.

Docket fee—Entry of decree by consent.—A docket fee cannot be allowed in a suit in admiralty where the decree was entered as a matter of course upon consent of the parties and not by reason of the submission of any question of law or fact to the court. *The Dwinsk*, (S. D. N. Y. 1915) 227 Fed. 958.

Vol. II, p. 289, sec. 974.

"Costs"—*Preliminary examination*.—In *U. S. v. Smith*, (M. D. Tenn. 1917) 240 Fed. 756, the court said: "Under this section the word 'costs' as used in reference to prosecutions for fines or forfeitures, means the 'taxable costs of the trial before the court and petit jury in which defendants have been convicted.' *United States v. Wilson*, (C. C.) 193 Fed. 1007. That is, in effect, in such cases the word 'costs' means merely the taxable

costs of the court cause. The preliminary proceedings before the Commissioner are, it is settled, not a part of the cause in the court itself. There is no 'cause' in the court until an indictment or information is filed; the filing therein of the Commissioner's transcript not being the institution of a suit, but having as its object the giving of information to the District Attorney that the defendant has been held to bail or committed to await the action of the grand jury." See to the same effect *U. S. v. Briebach*, (E. D. Ark. 1917) 245 Fed. 204.

Conviction for criminal contempt.—On a conviction for criminal contempt it is within the power of the trial judge to require payment of costs, not as a fine but as an incident of the judgment of conviction. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

Cited without specific application in American Surety Co. v. U. S., (C. C. A. 5th Cir. 1917) 239 Fed. 680, 152 C. C. A. 514, wherein costs were included as part of a judgment of conviction for rebating.

Vol. II, p. 291, sec. 982.

Dismissal on eve of trial.—Waiting until the moment of trial to dismiss a proceeding furnishes ample ground for the court to tax as costs every item which the law permits. In fact the circumstances may justify a court of equity in going as far as possible in compelling reimbursement for expenditures defendant made in good faith, in preparation for the trial of the case. *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901.

But, upon dismissal, the court cannot tax any costs which could not be taxed if the case had gone to trial and there had been a decree for the defendant. There is no authority for permitting a penalty to be assessed because of the dismissal of the case on the eve of the trial. *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901.

Expense for expert witnesses.—In *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901, on motion to tax costs, the defendant's disbursements for expert witnesses in the preparation of a case and in attendance for the trial were denied. The statutory witness fees were allowed.

Vol. II, p. 291, sec. 983.

Cases where costs are recoverable.—This section, when it refers to "trials in cases where by law costs are recoverable," means that costs are recoverable in all cases where by any provision of statute any costs are recoverable. Motion Picture Patents Co. v. Universal Film Mfg. Co., (S. D. N. Y. 1916) 232 Fed. 263.

Exemplification and copies.—For exemplifications and copies of papers necessarily obtained for use on a trial, "necessarily" must be limited to mean those exemplification and copies of papers which are essential to the cause. Motion Picture Patents Co. v. Universal Film Mfg. Co., (S. D. N. Y. 1916) 232 Fed. 263.

For an extended memorandum of items of copies of papers, in a suit for infringement of patent, considered and held to be taxable, see Motion Picture Patents Co. v. Universal Film Mfg. Co., (S. D. N. Y. 1916) 232 Fed. 263. See also Bone v. Walsh Constr. Co., (S. D. Ia. 1916) 235 Fed. 901.

Stenographer's minutes.—A copy of the stenographer's minutes of a trial furnished to one of the parties is not a copy of a paper necessarily obtained for use on the trial within the meaning of this section. Stallo v. Wagner, (C. C. A. 2d Cir. 1917) 245 Fed. 636, 158 C. C. A. 64.

A docket fee is unquestionably costs. Motion Picture Patents Co. v. Universal Film Mfg. Co., (S. D. N. Y. 1916) 232 Fed. 263.

1912 Supp., p. 45. [Act of June 25, 1910.]

Liability of government for costs.—Congress did not intend that the United States should be liable for any of the costs incurred under the provisions of this Act. U. S. v. Fair, (N. D. Cal. 1916) 235 Fed. 1015, wherein it was held that the court was without power to order the transcription of the testimony at the expense of the government or at the expense of the reporter, where he was not an officer of the court.

COUNTERFEITING AND FORGERY

Vol. II, p. 303, sec. 5421.

A preliminary sworn statement or application for the purchase of land under the Timber and Stone Act (in PUBLIC LANDS) does not constitute the presentation of a writing in support of or in relation to a claim against the United States within the intentment of the statute. U. S. v. Byron, (D. C. Ore. 1915) 223 Fed. 798.

Vol. II, p. 305, sec. 5430.

See notes to PENAL LAWS, 1909 Supp., p. 444, § 150, *infra*, this volume.

Vol. II, p. 310, sec. 5457.

See notes to PENAL LAWS, 1909 Supp., p. 448, § 163, *infra*, this volume.

Vol. II, p. 313, sec. 5458.

See notes to PENAL LAWS, 1909 Supp., p. 448, § 164, *infra*, this volume.

Vol. II, p. 315, sec. 5.

See notes to PENAL LAWS, 1909 Supp., p. 451, § 173, *infra*, this volume.

CRIMES AND OFFENSES

Vol. II, p. 321, sec. 1014.

Nature of proceedings.—Proceedings before a commissioner, or other magistrate authorized to conduct examinations under R. S. sec. 1014, are merely preliminary for the purpose of ascertaining whether there is reasonable cause to believe that the person brought before the examining officer has violated a statute of the United States, and, if he so finds, it is his duty to hold or admit him to bail, to await the action of the grand jury. In no sense can it be said that this is a trial, for no judgment or sentence can be pro-

nounced or imposed by the commissioner, or any judge, sitting as an examining magistrate, even if it is the district judge, who holds the examination. U. S. v. Briebach, (E. D. Ark. 1917) 245 Fed. 204.

Following state practice.—*Mode of process.*—It has been assumed that the phrase "agreeably to the usual mode of process against offenders in such state" found in this section, regulates and controls the steps to be taken upon bailing one who has been indicted by a grand jury of the United States as well as those preliminary examinations to which parts of

the section are particularly appropriate. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Liability upon forfeiture of bail bond.—Where a state statute enumerates the causes which will exonerate a defendant and his sureties from liability upon a forfeiture taken, the state procedure will govern the federal courts in a proceeding by the government for forfeiture of a bail bond. *De Orozco v. U. S.*, (C. C. A. 5th Cir. 1916) 237 Fed. 1008, 151 C. C. A. 70.

Removal of accused to trial district.—Offense against the United States.—An offense under the Alaska Criminal Code is not an offense against the laws of the United States and an offender thereunder, present in a federal district, cannot be removed to the district court of Alaska under the provisions of this section. *Ex parte Krause*, (W. D. Wash. 1915) 228 Fed. 547.

Vol. II, p. 335, sec. 1028.

A certified copy of order of sentence and record of conviction is sufficient to authorize the retention of the prisoner without any warrant or mittimus. *Ex parte Thurston*, (W. D. Wash. 1916) 233 Fed. 847.

Vol. II, p. 337, sec. 1024.

Election of counts.—Where the different counts of an indictment, charge different offenses, but all violations of the same statute, and all relate virtually to the same transaction, so that the evidence offered to sustain one is also admissible under the others, the court may properly refuse to require the government, at the close of its case, to elect upon which of the counts conviction would be sought. *Wallace v. U. S.*, (C. C. A. 7th Cir. 1917) 243 Fed. 300, 156 C. C. A. 80.

Offenses held to have been properly joined.—In one count of the indictment the defendant was charged with embezzling money, and in the other with embezzling property, both belonging to the United States. It was held that these two offenses, being of the same class of crimes, were properly joined in one indictment. *McNeil v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 827, 159 C. C. A. 129.

Consolidation.—For a case giving a statement of matters embraced in two indictments, one charging acts in restraint of trade in violation of the Sherman Act and the other charging a conspiracy to begin and set on foot certain military enterprises to be carried on from within the United States against a foreign power, which sufficiently showed that the charges contained in them were charges for acts and transactions connected together and which might be properly joined, within

the meaning of this section, see *U. S. v. Bopp*, (N. D. Cal. 1916) 237 Fed. 283.

Vol. II, p. 340, sec. 1025.

Effect of section.—This section, in effect, directs that the existence of irregularity, if error of form, shall not be presumed a wrong to the accused; but it must be shown to be so. *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

Selection of grand jury.—The designation made by the statute of the officials charged with the duty of selecting the names to be drawn from to make up grand and petit juries is a means adopted to prevent the pollution of the stream of justice at its source. The provision was intended to guard the administration of the criminal law against improper influences. The court is not vested with a discretionary power to dispense with a compliance with an essential feature of a safeguard prescribed by law. An impeachment of an indictment because of a noncompliance with the requirement that the names put in the jury box be selected by specified officials is not a suggestion of a defect or imperfection in matter of form only under this section, but goes to the vital question of the legality of the existence of the body by which the charge was made, and of its right or power to make a charge which the party charged can be required to defend against. *Dunn v. U. S.* (C. C. A. 5th Cir. 1917) 238 Fed. 508, 151 C. C. A. 444.

Indictment—Sufficiency in general.—In its last analysis the question of the sufficiency of an indictment under this section is: Does the indictment contain a sufficient accusation of crime, and do its averments furnish the accused with such a description of the charge, as will enable him to make his defense and avail himself of his conviction or acquittal for protection against future proceedings for the same offense. And is the indictment sufficient to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to sustain a conviction if one should be had. *Knauer v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 8, 150 C. C. A. 210.

Particularity.—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, the indictment, charging a violation of section 32 of the Penal Code (1909 Supp., p. 414) alleged that at a stated time the accused "unlawfully, knowingly and feloniously did falsely assume and pretend to be an officer of the Government of the United States, to-wit, a member of the House of Representatives of the Congress of the United States of America, that is to say, A. Mitchell Palmer, a member of Congress representing the Twenty-sixth District of the State of Pennsylvania, with the intent, then and

there, to defraud Lewis Cass Ledyard," and other persons who were named and others to the grand jury unknown, "and the said defendant, then and there, with the intent and purpose aforesaid, did take upon himself to act as such member of Congress; against the peace," etc., etc. It was urged that the indictment was defective because of its failure to describe the circumstances of the offense. But it was held that the case was clearly covered by this section.

Allegation of incorporation.—In view of this section it was unnecessary to charge in an indictment, that a railway company, whose car was broken into for the purpose of committing larceny, was an incorporated company, as such omission could have no tendency to prejudice the defendant. *Morris v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 516, 143 C. C. A. 584.

So, an indictment for use of the mails to defraud a bank, which fails to charge that the bank was incorporated, will not be quashed since the omission can in no wise prejudice the defendant. *McClendon v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 523, 143 C. C. A. 591. And see further to the same effect, *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Indictment held sufficient.—An indictment charging a violation of the Anti-Drug Act, in that the defendant, on a specified date, gave an order for opium, which "was thereafter accepted" and "after acceptance" he failed to preserve a duplicate thereof "in such a way as to be readily accessible" contrary to law, was held saved under this section from the objection that the offense was not alleged of a day certain, since the indictment referred to things past and an offense completed and at least of date between acceptance of the order and indictment, an allegation of some unnamed date within the essential period could not tend to the prejudice of the defendant. *U. S. v. Gaag*, (D. C. Mont. 1916) 237 Fed. 728.

Rule applicable to information.—The rule applicable to an information is no less liberal than that applicable to an indictment under this section. Its averments of facts constituting the offense need be only so certain and specific as fairly to inform defendant of the crime intended to be alleged, and as to make the judgment of conviction or acquittal thereon a complete defense to a second prosecution of the defendant for the same offense. *Simpson v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 841, 154 C. C. A. 543.

Vol. II, p. 345, sec. 730.

For larceny of fish from a pound in the Atlantic ocean more than three miles off the coast of New Jersey, where the ac-

cused were taken into custody while fishing with hook and line from a boat moored to the pound and were immediately brought ashore within the state, the federal District Court of New Jersey was the proper tribunal to try whatever offense had been committed. *Miller v. U. S.*, (C. C. A. 3d Cir. 1917) 242 Fed. 907, 155 C. C. A. 495.

Vol. II, p. 347, sec. 731.

General statement.—"Undoubtedly where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done; or where it may be said there is a continuously moving act commencing with the offender and hence ultimately consummated through him, as the mailing of a letter; or where there is a confederation in purpose between two or more persons, its execution being by acts elsewhere, as in conspiracy. It may be that where there is a general duty it may be considered as insistent both where the 'actor' is and the 'subject' is, . . . as in the case of the duty of a father to support his children; and if the duty have criminal sanction it may be enforced in either place." *U. S. v. Lombardo*, (1916) 241 U. S. 73, 36 S. Ct. 508, 60 U. S. (L. ed.) 897.

Fraudulent issuance of certificate of deposit.—Where a certificate of deposit was signed in blank by the cashier of a bank in the district of Idaho, was filled in by another person in the state of Mississippi and was negotiated in Kentucky it was held that a prosecution of the cashier for issuing or putting forth a certificate of deposit without the proper authority and with intent to injure or defraud the banking association in violation of R. S. sec. 5209 (see the title NATIONAL BANKS, vol. 5, p. 145) fell within the provisions of this section and could be maintained in the federal court for Idaho. *Simpson v. U. S.*, (C. C. A. 9th Cir. 1916) 229 Fed. 940, 144 C. C. A. 222.

Conspiracy.—"The rule is now well settled that prosecutions for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act was done to effectuate the object of the conspiracy." *Shea v. U. S.*, (C. C. A. 6th Cir. 1916) 236 Fed. 97, 149 C. C. A. 307.

White slavery prosecution.—The offense of failing to file a statement with the commissioner of immigration as required by section 6 of the White Slave Traffic Act, 1912 Supp., p 421, is not a continuing one within the meaning of this provision which may be prosecuted in a federal court for the district at which the woman is kept, maintained or harbored. *U. S. v. Lombardo*, (1916) 241 U. S. 73, 36 S. Ct. 508, 60 U. S. (L. ed.) 897.

CUSTOMS DUTIES

Vol. II, p. 585, sec. 2630.

Special deputy collector.—The powers and duties of collectors of customs are equally vested in their special deputies; so the special deputies' right and power to liquidate and reliquidate are without question. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Vol. II, p. 760, sec. 21.

Construction.—A liquidation by the collector pending appeal to reappraisement is not voidable merely, but void. Such action does not constitute a "settlement of duties" within the purview of this section, providing that a settlement of duties shall be final a year after entry in the absence of fraud and in the absence of protest. *Stubbs v. U. S.*, (1917) 7 U. S. Cust. App. 399.

"Absence of fraud."—The statute makes the liquidation final "in the absence of fraud." This does not necessitate a finding of fraud by the collector to justify reliquidation, but directs him not to reliquidate in "the absence of fraud." If he suspects fraud, he cannot say that fraud is absent. A well founded suspicion of fraud is sufficient to move him to reliquidation. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

The words "in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee" do not restrict the fraud to the owner, importer, agent, or consignee. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Reliquidation—Goods beyond collector's control.—The power of the collector to reliquidate when the goods have gone beyond his possession or control has been administratively, legislatively, and judicially recognized from the earliest time. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Collector's decision.—The law restricts a collector's findings to rate and amount of duty. He can make no conclusive finding as to fraud or anything else than rate and amount of duty. A reliquidation involves nothing except a different finding as to rate and amount of duty. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Within year from entry.—The collector's power to reliquidate within a year after entry has received uniform administrative, legislative, and judicial recognition prior to, and since, the passage of this Act. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

After year from entry in case of protest.—The collector's power to reliquidate after the expiration of a year from entry in case of protest has received uniform administrative, legislative, and judicial recognition prior to, and since, the passage of this Act. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Evidence—Burden of proof.—In the trial before the board of general appraisers of a protest against a reliquidation made more than a year after entry, the legal presumption is, as in all cases, that the collector of customs acted within the powers conferred upon him by law, and the burden is on the protestant to show the invalidity of the reliquidation. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

In the trial before the board of general appraisers of a protest against a reliquidation made more than a year after entry, evidence that the goods had been bought and sold by importers at weights greater than the entered ones, is sufficient to establish a prima facie case of fraud and put upon the protestants the burden of overcoming it. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Due process of law.—The customs administrative procedure, in case of reliquidation for fraud more than one year after entry, gives the importer notice and abundant opportunity to defend. The record shows that such notice and opportunity were had in these cases. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Liquidation pending appeal.—The collector has no power to liquidate pending appeal to reappraisement. *Stubbs v. U. S.*, (1917) 7 U. S. Cust. App. 399.

Power of special deputy collector.—The right and power of a special deputy to liquidate and reliquidate are without question. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

1914 Supp., p. 130, sec. IV, J, subsec. 7.

Discount—Reciprocity treaties.—The 5 per cent tariff discount given to merchandise imported in American bottoms by this section with its proviso, is inoperative so long as the present reciprocity treaties with foreign countries remain in force. *U. S. v. M. H. Pulaski*, (1917) 243 U. S. 97, 37 S. Ct. 346, 61 U. S. (L. ed.) 617.

ELECTIONS

1912 Supp., p. 69, sec. 1.

Primary laws.—This Act recognizing primary elections and limiting the expenditures of candidates for senators in connection with them is not in effect an adoption by Congress of all state primary laws. *U. S. v. Gradwell*, (1916) 243 U. S. 476, 37 S. C. 407, 61 U. S. (L. ed.)

857, *affirming* (D. C. R. I. 1916) 234 Fed. 446; (S. D. W. Va. 1916) 236 Fed. 993.

Primary elections.—The word "election," as used without qualification, refers to a general election and not a primary election. *U. S. v. O'Toole*, (S. D. W. Va. 1916) 236 Fed. 993, *affirmed* (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857.

EVIDENCE

Vol. III, p. 2, sec. 724.

Production "in the trial" as meaning "on or at the trial."—A court of law is not empowered to compel one party to an action to produce books and papers in advance of trial for his adversary's examination and inspection, by the provisions of this section; as the words "in the trial" "on or at the trial" and the statute may well be regarded as affording a short and quick way of obtaining documentary evidence for use "in the trial" of an action at law, leaving the parties to a bill of discovery if they desire the production before the trial for the purpose of preparing for it. *General Film Co. v. Sampliner*, (C. C. A. 6th Cir. 1916) 232 Fed. 95, 146 (C. C. A. 287, *following Carpenter v. Winn*, (1911) 221 U. S. 533, 31 S. Ct. 683, 55 U. S. (L. ed.) 842.

Vol. III, p. 8, sec. 863.

Depositions, when taken—*Rule 47 of the Federal Equity Rules* was not intended to vary or be a limitation upon this section. *Iowa Washing Mach. Co. v. Ward*, (S. D. N. Y. 1915) 227 Fed. 1004.

The rule would seem to be that to take depositions under this section within the time provided by equity rule 47, it is not necessary that previous authorization be obtained from the court. But if the depositions are not taken within the time limited by rule 47, they will be suppressed, unless previous permission from the court to take them has been obtained. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783.

In *Block v. Arrowsmith Mfg. Co.*, (D. C. N. J. 1917) 243 Fed. 775, the question before the court was whether or not plaintiff, long after the time had elapsed for taking and filing depositions under rule 47, and after the case had been placed on the trial calendar for two terms, may take depositions by notice to defendant,

or its counsel, without "some strong reason shown by affidavit" therefor, and without application to court for an order to do so. The court said: "Depositions under such circumstances may not be taken. Before depositions under such circumstances may be taken, the litigant must, upon application to court, show by affidavits some strong reason why the testimony of the witnesses cannot be had orally on the trial, and why their depositions have not been taken before. This the plaintiffs have not done, and so far as the court is informed there is no reason why the depositions were not taken within the time required by the equity rules."

Use of deposition of deponent available at trial.—This section is so limited by R. S. sec. 865 that if the deponent is available at the trial his deposition cannot be read. *Vagaszi v. Consolidation Coal Co.*, (C. C. A. 2d Cir. 1915) 225 Fed. 913, 141 C. C. A. 37.

Notice.—Where appellants had due notice of the taking of a deposition under this section, but did not appear, and there was no examination of witnesses, they cannot complain that they had no opportunity for objection, or that they were not notified of the filing of the depositions, it not appearing that by the local law where the deposition was used, that they were entitled to such notice of filing. *The D. J. Sawyer*, (C. C. A. 1st Cir. 1916) 236 Fed. 913, 150 C. C. A. 175.

Motion to vacate.—If the depositions are not taken in conformity with the law, the court has power, on motion, to vacate the notices in advance of the taking of the testimony. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783. *Compare Kline v. Liverpool, etc., Ins. Co.*, (S. D. N. Y. 1911) 184 Fed. 969, wherein the court declined to vacate the notice of the taking of depositions, considering that the plaintiff (who moved to vacate) would be pro-

ected by a motion to suppress the depositions after they had been taken.

Witness outside territorial limits of district—*Equity, rule 46.*—Equity rule 46 (198 Fed. xxxi, 115 C. C. A. xxxi), providing that testimony shall be taken by oral examination in open court, does not deprive the court of power to take depositions, in a proper case, under the provisions of this section. *Jennings v. Smith*, (S. D. Ga. 1917) 244 Fed. 836.

Re-examination of witness.—The same witness may be examined *de bene esse*, under this section, more than once in saits in equity as well as in actions at law. Of course, the court may restrain the taking of depositions of witnesses who have been previously examined when the purpose of examining them again is to harass or oppress. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783.

Vol. III, p. 22. [Act of March 9, 1892.]

Following state practice.—Where it appears that a considerable saving will be effected thereby a motion to take depositions under the state practice will be granted, since if the complainant is not fully practiced, depositions could afterward be taken under R. S. sec. 863. *Cook v. Flag*, (S. D. N. Y. 1916) 233 Fed. 713.

Vol. III, p. 27, sec. 884.

By virtue of this section certificates from the comptroller's office authenticated by his seal are admissible in evidence. *Weitzel v. Brown*, (1916) 224 Mass. 190, 112 N. E. 945.

Vol. III, p. 37, sec. 905.

Full faith and credit—*Generally.*—Except for the question of jurisdiction, the judgment of a court of another state is put upon the same footing as a domestic judgment, and no inquiry can be made as to the accuracy of the record as the conduct of the trial. *Lucas v. Vulcan Iron Works*, (M. D. Pa. 1916) 233 Fed. 823.

A judgment entered upon a warrant of attorney to confess judgment, contained in the instrument evidencing the obligation, without personal service on the obligor, is a judgment entitled to full faith and credit. *Miller v. Miller*, (1916) 90 Wash. 333, 156 Pac. 8.

"Records and judicial proceedings"—*Foreign judgments.*—This section applies only to the authentication of records of judicial proceedings had in the states and territories. It has no application to foreign judgments. *American Surety Co. v. Sandberg*, (W. D. Wash. 1915) 225

Fed. 150, wherein the court said: "It is conceded that there is no statute providing for the authentication of judicial proceedings in foreign countries. No treaty touching the question has been called to the court's attention. Justice Gray in *Hilton v. Guyot*, 159 U. S. 113, 228, 16 S. Ct. 139, 40 U. S. (L. ed.) 95, intimates that there is neither statute law nor treaty on the subject of foreign judgments."

Foreign judgment—*Authentication.*—*Shufeldt v. Mound City Bank*, (Okla. 1916) 160 Pac. 923, the certified copy of a foreign judgment was made up of the petition, summons, with the return of the sheriff thereon, answer of the defendant and the judgment of the court. It did not show that the judgment was signed and filed in the court where the judgment was rendered. The certificate of the clerk showing that the judgment was of record in his office, was held to be a sufficient authentication.

Certificate of judge.—A copy of a judgment of a state court, certified by the clerk alone without the certificate from the judge of the court to the effect that the attestation by the clerk is in due form, is not admissible in evidence. *Arndt v. Burghardt*, (1917) 165 Wis. 312, 162 N. W. 317.

Authentication—*Exclusiveness of statutory method.*—A state may adopt any other method of authenticating records admitted in their own courts. It may prescribe a less requirement but it cannot require more. *Block v. Schafer*, (Okla. 1917) 162 Pac. 456.

1914 Supp., p. 141. [Act Feb. 26, 1913.]

Admissibility of writing for comparison.—Handwriting, admitted to be used as a basis of comparison under the Act of Congress, is not required to be proven genuine in any other way than is any other document offered in evidence. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

The principle of admitting a memorandum book, diary or other writing for the purposes of comparison should apply only to the class of documents or books which are customarily and of common knowledge kept personally by the owner. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

It is proper under this Act in order to prove a signature, to admit for comparison, documents which witnesses testify they have seen signed by the one whose signature is questioned. *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

EXECUTION

Vol. III, p. 46, sec. 989.

Application of section.—This section is in aid of the collector only who received and turned over the tax to the Treasury Department. It has no application to the succeeding collector. *Roberts v. Lowe*, (S. D. N. Y. 1916) 236 Fed. 604; *Philadelphia, etc., R. Co. v. Lederer*, (E. D. Pa. 1917) 239 Fed. 184.

Vol. III, p. 54, sec. 1.

Statute directory.—Following *Godchaux v. Morris*, (C. C. A. 5th Cir. 1903) 121 Fed. 482, 57 C. C. A. 434, cited in the original annotation, it was held in *Lans-*

burgh v. McCormick, (C. C. A. 4th Cir. 1915) 224 Fed. 874, 140 C. C. A. 296, wherein a sale was attacked as a nullity because under the order of the court the sale was made in the city of Charleston and not as required by the statute on the premises or at the courthouse door of the county in which the land was situated, that the court having jurisdiction to order the sale, the mistake of directing that it be made at a place different from that required by statute did not make the sale void for want of jurisdiction but was an error to be corrected by appeal or by direct application to the trial court.

EXECUTIVE DEPARTMENTS

Vol. III, p. 58, sec. 161.

Regulations of Postmaster-General—*Mail matter as property*—*Designating depository*.—Mail matter, while continuing as such, is "property" appertaining to the Post-Office Department and the postmaster is authorized to prescribe requirements, not inconsistent with law, for its custody and preservation. He may determine what shall be regarded as a depository for mail, and the depository so designated becomes an authorized depository as a receptacle for the receipt or delivery of mail matter. *Pakas v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 350, 153 C. C. A. 276.

Vol. III, p. 61, sec. 177.

Assistant head of departments—*Assistant Attorney-General*.—This section is cited generally in *May v. U. S.*, (C. C. A.

8th Cir. 1916) 236 Fed. 495, 149 C. C. A. 547, on the question of the power of an assistant Attorney-General to take part in a grand jury investigation.

Vol. III, p. 62, sec. 178.

A deputy comptroller of the currency may exercise the power and discharge the duties attached to the office of comptroller during a vacancy in that office or in the absence or inability of the comptroller. If necessary the court will also take judicial notice that a certain person was deputy comptroller and will assume that at the date of his certificate he was authorized to exercise the powers and discharge the duties of the comptroller and was therefore at the time acting comptroller. *Weitzel v. Brown*, (1916) 224 Mass. 190, 112 N. E. 945.

EXTRADITION

Vol. III, p. 68, sec. 5270.

Treaty as affecting right to extradition.—Where a complaint charges an offense covered by treaty and another offense not included in the treaty, the court will assume that the foreign jurisdiction will respect its convention and not try the person charged with the crime upon other charges than those upon which extradition is allowed. *Kelly v. Griffin*, (1916)

241 U. S. 6, 36 S. Ct. 487, 60 U. S. (L. ed.) 861.

Offense not included in treaty.—*Must be a crime in both countries*.—The general principle of international law is that in all cases of extradition the act done on account of which extradition is demanded must be considered a crime by both parties. *Wright v. Henkel*, (1903) 190 U. S. 40, 23 S. Ct. 781, 47 U. S.

(L. ed.) 948. And it is enough if the particular variety of crime is criminal in both jurisdictions. So where the charge was perjury, the treaty would not be made a dead letter because some possible false statements might fall within the Canadian law, that would not be perjury by the law of Illinois. *Kelly v. Griffin*, (1916) 241 U. S. 6, 36 S. Ct. 487, 61 U. S. (L. ed.) 861.

Political offenses.—It is seldom that persons are surrendered for mere political offenses. *Matter of Sheazle*, (1845) 1 Woodb. & M. 66, 21 Fed. Cas. No. 12,734. The question as to whether the accused is wanted (in the legal sense of that term) upon a criminal charge and that it is not sought to secure him from a country upon which he is depending as an asylum because of political matters and that the treaty is not actually used as a subterfuge, is to be determined by the government of the United States through the Secretary of State. *In re Lincoln*, (E. D. N. Y. 1915) 228 Fed. 70.

Review of decision on habeas corpus.—The rule is well established that if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the treaty, and the magistrate has before him legal evidence on which to exercise his judgment as to the sufficiency of the facts to establish the criminality of the accused for the purpose of extradition, his decision cannot be reviewed on habeas corpus. *McNamara v. Henkel*, (1913) 226 U. S. 520, 33 S. Ct. 146, 57 U. S. (L. ed.) 330; *Bingham v. Bradley*, (1916) 241 U. S. 511, 36 S. Ct. 634, 60 U. S. (L. ed.) 1136.

Trial for different offense.—Where a complaint charges an offense covered by treaty and a second offense not included in the treaty, the court will assume that the foreign jurisdiction will respect its convention and not try upon other charges than those upon which the extradition is allowed. *Kelly v. Griffin*, (1916) 241 U. S. 6, 36 S. Ct. 487, 60 U. S. (L. ed.) 861.

Vol. III, p. 76, sec. 5271.

Object of section.—It is one of the objects of this section to obviate the necessity of confronting the accused with witnesses against him, and a construction of the section that would require a demanding government to send its citizens to another country where the fugitive is found, to institute legal proceedings, would defeat the whole object of an extradition treaty. *Bingham v. Bradley*, (1916) 241 U. S. 511, 36 S. Ct. 634, 60 U. S. (L. ed.) 1136.

Vol. III, p. 78, sec. 5278.

Any state or territory.—Territories are in the same position as states in regard to interstate extradition, and the execu-

tive of a territory has the same rights and is subject to the same duties as is the executive of a state. *Ex parte Krause*, (W. D. Wash. 1915) 228 Fed. 547.

Alaska.—The executive authority of Alaska under this section has the same rights and bears the same duties as the governor of a state, the extradition laws being open to all the states and territories. *Ex parte Krause*, (W. D. Wash. 1915) 228 Fed. 547.

Who is "a fugitive from justice."—The law is well settled that, if the alleged fugitive was in the demanding state at the time when the offense was committed, he is, whenever he is thereafter found in another state, presumed to be a fugitive from justice, no matter for what purpose or reason nor under what circumstances he left the state. *Ex parte Montgomery*, (S. D. N. Y. 1917) 244 Fed. 967.

Surrender of fugitive after requisition, to a third state.—Where the accused is brought into a state as a fugitive from justice he may be surrendered to the authorities of a third state as a fugitive without opportunity to return to the state in which he is domiciled. *Ex parte Innes*, (Tex. Crim. 1915) 173 S. W. 291, *affirmed* (1916) 240 U. S. 127, 36 S. Ct. 290, 60 U. S. (L. ed.) 562. And see to the same effect, *Kelly v. Mangum*, (1916) 145 Ga. 57, 88 S. E. 556.

And in *Kelly v. Mangum*, (1916) 145 Ga. 57, 88 S. E. 556, *following Innes v. Tobin*, (1916) 240 U. S. 127, 36 S. Ct. 290, 60 U. S. (L. ed.) 562, it was held that where a fugitive from justice from the state of Missouri was convicted for crime in a United States District Court of Alabama, and was committed to the United States penitentiary in Georgia to serve his sentence, upon his release therefrom at the expiration of such term, upon requisition from the governor of Missouri, the governor of Georgia could issue his warrant and have such person arrested for rendition to the demanding state.

Fugitive serving sentence in asylum state.—After the expiration of the term of sentence in the asylum state the governor of such state may issue his warrant and have such person arrested for rendition to the demanding state. *Kelly v. Mangum*, (1916) 145 Ga. 57, 88 S. E. 556.

Interstate rendition.—Where a person charged with crime is brought into a state, under requisition, as a fugitive from justice, he may be surrendered to the authorities of another state as a fugitive, without opportunity to return to the state in which he is domiciled. *Ex parte Innes*, (Tex. Crim. 1915) 173 S. W. 291, *affirmed* under the title *Innes v. Tobin*, (1916) 240 U. S. 127, 36 S. Ct. 290, 60 U. S. (L. ed.) 562.

"Charging" with crime—Question of law.—The question as to whether the

person demanded and detained on an extradition warrant is substantially charged with a crime is a question of law, which on the face of the papers is open to inquiry on writ of habeas corpus. *Ex parte Wildman*, (Okla. Crim. 1917) 168 Pac. 246.

Effect of warrant as prima facie evidence of legal prerequisites.—The extradition warrant is prima facie proof, but not conclusive proof, that the requirements of the statute were complied with before the issuance of the warrant. *Ex parte Wildman*, (Okla. Crim. 1917) 168 Pac. 246.

Proceedings in demanding state—Questions raised on habeas corpus.—On habeas corpus testimony will not be weighed as to the presence in, or absence from, the demanding state of an alleged fugitive from justice, at the time of the stated commission of a crime therein by him; and on habeas corpus it is not competent to try the question of alibi, or the guilt or innocence of the accused. *In re Thompson*, (1915) 85 N. J. Eq. 221, 96 Atl. 102.

The question of an alleged bar by the statute of limitations of the demanding state will not be determined on habeas corpus, but will be left to the decision of the courts of such state. *Reed v. U. S.*, (C. C. A. 9th Cir. 1915) 224 Fed. 378, 140 C. C. A. 64.

Technical sufficiency of indictment.—The questions of the technical sufficiency of the indictment and of the procedure under it are not open to inquiry on habeas corpus to review the issuance of a warrant of arrest in interstate extradition proceedings. *Munsey v. Clough*, (1904) 196 U. S. 364, 25 S. Ct. 282, 49 U. S. (L. ed.) 515; *Reed v. U. S.*, (C. C. A. 9th Cir. 1915) 224 Fed. 378, 140 C. C. A. 64; *People v. Police Com'rs*, (1905) 100 App. Div. 483, 91 N. Y. S. 760; *Coleman v. State*, (1908) 53 Tex. Crim. 93, 113 S. W. 17.

Bail on habeas corpus.—*In New Jersey* there is no statute authorizing a person charged with crime in another state, and arrested on the governor's warrant of extradition, to be admitted to bail. *In re Thompson*, (1915) 85 N. J. Eq. 221, 96 Atl. 102.

Vol. III, p. 90, sec. 5.

"Similar purposes"—Under treaty.—Where extradition is demanded by a foreign country, under international treaty, the words "similar purposes," when limited to an attempt to prove a criminal charge, refer to the crimes so denominated in the treaty and not to an extradition hearing in the country making the demand. *In re Lincoln*, (E. D. N. Y. 1915) 228 Fed. 70.

FALSE PERSONATION

Vol. III, p. 92. [*Act of April 18, 1884.*]

See notes to PENAL LAWS, 1909 Supp., p. 414, § 32, *infra*, this volume.

FINES, PENALTIES AND FORFEITURES

Vol. III, p. 94, sec. 732.

Venue of an action by an informer to recover a penalty given by a federal statute is governed by this section (now Judicial Code, § 43, 1912 Supp., p. 152) and not by Judicial Code, § 51, 1912 Supp., p. 153. *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

Vol. III, p. 101, sec. 5292.

Summary investigation—Conditions precedent.—The imposition of a fine or

forfeiture is not a necessary condition precedent to the filing of a petition for summary investigation. *In re Beloochistan Rug Weaving Co.*, (S. D. N. Y. 1917) 244 Fed. 283.

Vol. III, p. 104, sec. 5294.

Scope of section.—*In Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207, the court commented at considerable length on the scope of this section.

FOOD AND DRUGS

Vol. III, p. 120, sec. 3.

Manufacturer of oleomargarine.—The term "manufacturer of oleomargarine" applies not only to one who completes the whole process of manufacture for sale, including the use of artificial coloration, but to one who adds artificial coloration to oleomargarine manufactured by others and sells or disposes of it. *U. S. v. Orr*, (D. C. R. I. 1916) 233 Fed. 718.

Wholesale dealer.—A person, firm, or corporation may be a wholesale dealer in oleomargarine, although the sales are confined to one individual, firm, or corporation. To constitute a wholesale dealer, it is not necessary that the seller have two or more customers. *Mitchell v. Cole*, (N. D. N. Y. 1915) 226 Fed. 824.

Vol. III, p. 122, sec. 6.

Constitutionality.—"The Oleomargarine Law was enacted under the power of Congress (Constitution, art. 7, § 8, par. 2:) 'To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'" *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Relation to Meat Inspection Law.—As a matter of common and judicial knowledge, oleomargarine is a meat product, and therefore its manufacture comes within the language of and is governed by the Meat Inspection Law of June 30, 1906, ch. 3913, 34 Stat. 676, forbidding the use of a "false or deceptive name," repeated in and superseded by the provision in the Meat Inspection Act of March 4, 1907, ch. 2907, 1909 Supp., p. 46. *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Vol. III, p. 123, sec. 8.

Manufacturer of oleomargarine.—The term "manufacturer" applies not only to one who completes the whole process of manufacture for sale, including the use of artificial coloration, but to one who adds artificial coloration to oleomargarine manufactured by others. And the tax of ten cents per pound is payable by the manufacturer whether he is one who completes the product by adding artificial coloration to oleomargarine made by others or is one who adds it to oleomargarine wholly of his own production. *U. S. v. Orr*, (D. C. R. I. 1916) 233 Fed. 718.

"Removed."—Where defendant constructed a "cave" under the back room in one of his places of business, there colored oleomargarine without paying the

government tax, and then transferred it from the "cave" to the salesroom in the same building, the oleomargarine was "removed" in violation of the statute as fully as though he had shipped it to an adjoining city. *Marhoefer v. U. S.*, (C. C. A. 1917, 7th Cir.) 241 Fed. 48, 154 C. C. A. 48.

Vol. III, p. 126, sec. 17.

Who may commit offense.—In *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, — C. C. A. —, affirming a conviction for violation of this section, the court said: "The contention that the defendant Walsh should have been dismissed, because he was merely an employee, and not a manufacturer, is answered against the appellant in *May v. U. S.*, *supra* [(C. C. A. 8th Cir. 1912) 199 Fed. 42, 117 C. C. A. 420], and ample reasons for so holding are given."

Criminal prosecution as bar to forfeiture.—Acquittal of a stockholder of a corporation under an indictment for violating this section is not bar to a proceeding against the corporation for forfeiture for the same alleged offense charged against it. *U. S. v. Manufacturing Apparatus, etc.*, (Colo. 1916) 240 Fed. 235.

Indictment.—In an indictment for violation of this section it is not essential, in order to charge the defendants as manufacturers of oleomargarine, that the indictment should indicate whether the defendants manufacture by adding coloring matter to the oleomargarine made by others or add it to oleomargarine made entirely by themselves. *U. S. v. Orr*, (D. C. R. I. 1916) 233 Fed. 718.

In an indictment charging unlawful conspiracy to defraud the United States of sums to become due for internal revenue taxes on oleomargarine having artificial coloration, by causing it to be unlawfully removed from the place of its manufacture, without there being affixed coupon stamps representing payment of the tax of ten cents per pound and without such tax having been paid or secured by any person, it was held to be not necessary to allege that the defrauding of the United States was to be accomplished by deceit, misrepresentation or concealment. The object of the conspiracy being to defraud the United States by an act prohibited by law, the intent to defraud is supplied by the allegation that the prohibited act was to be done unlawfully and knowingly. *Tillinghast v. Richards*, (D. C. R. I. 1915) 225 Fed. 226.

Where an indictment charged that defendants were engaged in carrying on the business of manufacturing oleomargarine

and did defraud and attempt to defraud the United States of the tax on a quantity of oleomargarine "provided and manufactured and removed from the place of manufacture for consumption and sale by them . . . that is to say, . . . did manufacture, produce and furnish for the use and consumption of others a large quantity" of oleomargarine artificially colored to look like butter, which, "at the time it was so manufactured, produced, removed, and furnished" was subject to a tax, which they did not pay, it was held that, construing all the language together, the so-called specific allegations following the words "that is to say," did not narrow or restrict the general charge, but amplified and in greater particularity described how the defendant violated the requirements of section 8, and was sufficient to support a conviction. *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48.

In *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48, the indictment there quoted in full was held to be sufficiently specific and definite in charging an "attempt to defraud" the United States out of a tax on artificially colored oleomargarine.

Vol. III, p. 128, sec. 4.

"Absorption of abnormal quantities."—"Any departure from methods appropriate to the circumstances of the particular churning, departure from methods calculated to result in a product of appropriate quality, with intent and effect to increase moisture over what it would have been, but for such departure, has caused 'absorption of abnormal quantities of water, milk, or cream,' within the statute, whether the increase be one to retention of moisture throughout, or by elimination and reincorporation." *Henningsen Produce Co. v. Whaley*, (Mont. 1917) 238 Fed. 650.

A regulation of the commissioner of internal revenue that "butter having 16 per cent or more of moisture contains an abnormal quantity and is classed as adulterated butter," the regulation not applying to a farmer, was unauthorized and void, since it was legislative in character and not simply a rule of procedure and administration. *Henningsen Produce Co. v. Whaley*, (Mont. 1917) 239 Fed. 650.

Evidence.—For the competency of evidence to establish a claim that an alkali was used for the purpose or with the effect of deodorizing or removing rancidity from certain butter particles, see *DeWitt v. Skinner*, (C. C. A. 8th Cir. 1916) 232 Fed. 443, 146 C. C. A. 437.

Vol. III, p. 131, sec. 6.

Admissibility of books and returns in evidence.—In *U. S. v. Elder*, (W. D. Ky. 1916) 232 Fed. 267, the defendants were

charged with various violations of the Oleomargarine Law. In support of the charges, and with especial reference to the charge of manufacturing oleomargarine, the United States offered in evidence certain of the monthly returns of a manufacturer and wholesale dealer in oleomargarine. These returns, on blanks furnished by the internal revenue bureau, were made to the collector of internal revenue for the proper district, and to each return was attached an affidavit or verification of its truth, signed and sworn to by an employee of the manufacturer. Whether the employee personally knew the facts thus recited or whether he ascertained them from the books of the manufacturer did not appear. It was held that such papers were not admissible in evidence.

1909 Supp., p. 137, sec. 1.

Purpose of Act.—The primary purpose of the statute was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods. The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was and not upon misrepresentations as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to the health of consumers. *U. S. v. Lexington Mill, etc., Co.*, (1914) 232 U. S. 399, 34 S. Ct. 337, 58 U. S. (L. ed.) 658, L. R. A. 1915B 774, *affirming* (C. C. A. 8th Cir. 1913) 202 Fed. 615, 121 C. C. A. 23; *U. S. v. Forty Barrels, etc., of Coca Colo.*, (1916) 241 U. S. 265, 36 S. Ct. 573, 40 U. S. (L. ed.) 995, Ann. Cas. 1917C 487.

State statutes.—This Act is directed against the adulteration and misbranding of articles of food transported in interstate commerce, and a state statute directed to the manner of selling a certain product at retail is not repugnant to it. *Armour v. North Dakota*, (1916) 240 U. S. 510, 36 S. Ct. 440, 60 U. S. (L. ed.) 771, Ann. Cas. 1916D 548, *affirming* (1913) 27 N. D. 177, 145 N. W. 1033, Ann. Cas. 1916B 1149, L. R. A. 1916E 380.

1909 Supp., p. 137, sec. 2.

Application to interstate and foreign commerce.—A manufacturer who sells adulterated goods to a wholesale dealer engaged in interstate commerce is involved in a transaction pertaining to interstate commerce and is subject to the provision of the Food and Drugs Act. *Glaser v. U. S.*, (C. C. A. 7th Cir. 1915) 224 Fed. 84, 139 C. C. A. 566.

Conspiracy to violate Act.—In *Mitchell v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 357, 143 C. C. A. 477, a judgment was affirmed convicting the defendants of conspiracy to violate this Act by misbranding coffee.

Information—Generally.—Offenses arising under this Act may be prosecuted upon information supported by the oath of some one having knowledge of the facts showing the existence of probable cause. An information signed merely by a district attorney is insufficient. *U. S. v. Wells*, (W. D. Tenn. 1913) 225 Fed. 320. See to the same effect, *U. S. v. Weeks*, (S. D. N. Y. 1912) 225 Fed. 1017.

But an information bearing the signature of the district attorney and attached to which and made a part of it are affidavits sworn to before notaries public, is sufficient to support a judgment. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

And where no warrant of arrest is sought, an information signed by the district attorney is sufficient without any verification and without supporting affidavits. In such case it is not necessary for the district attorney who signed the information in his official character, to assert in the body of that document that he informed the court upon his oath as a government official of the facts therein set forth. It will be presumed that he acted on his oath as an officer of the government. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

On a prosecution by information against a corporation where no warrant of arrest is applied for or can be issued, an information filed by the United States attorney under the sanction of his official oath, and without verification, will be sufficient, but where the information is not so filed but is upon the oath of several parties named in annexed affidavits, these affidavits cannot be considered by the court to help out the information if taken before a notary public, because such an officer has no authority under the laws of the United States to administer any oaths in connection with criminal proceedings. *U. S. v. Schallinger Produce Co.*, (E. D. Wash. 1915) 230 Fed. 290.

In *U. S. v. Hopkins*, (S. D. N. Y. 1912) 228 Fed. 173, the court said: "It is the invariable practice in this district to prosecute under the pure food law by criminal information; that is, the government alleges a misdemeanor."

Waiver of defects.—Defects in the verification of an information or in the acknowledgment of its supporting affidavits, are waived if not raised by suitable objection before trial. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

Sufficiency of information alleging misbranding as to curative effects.—An infor-

mation was not insufficient in law because it failed to show that the alleged misrepresentations as to the curative effects of the article were in the "ultimate container," that is to say, in the package as it reached the ultimate consumer. So, where the information alleged that the shipment consisted of "certain packages" and that the packages contained the circular or pamphlet later described therein; that one of the alleged misrepresentations appeared "on the label of the carton aforesaid" and that the other was "included in the circular or pamphlet aforesaid" the information should be interpreted to mean that the misrepresentations were intended to accompany the bottles into the hands of the consumer. *Simpson v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 841, 154 C. C. A. 543.

Pleas to information.—The pleas to an information must be either in abatement, in bar, or the general issue. A motion to quash is not a pleading and therefore is not included. *U. S. v. Hopkins*, (S. D. N. Y. 1912) 228 Fed. 173, wherein it was held that a pleading labeled "Plea and Answer" and containing merely a statement of evidence intended to support a plea of not guilty, was not a plea at all.

Question for jury.—It is for the jury to say from the evidence submitted to it whether the defendant's articles were adulterated, and they are to determine the weight to be given expert evidence on the question. *Glaser v. U. S.*, (C. C. A. 7th Cir. 1915) 224 Fed. 84, 139 C. C. A. 566.

1909 Supp., p. 138, sec. 7.

Construction of sections 7 and 8.—In *Weeks v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 64, 139 C. C. A. 626, Lacombe, J., said: "The case calls for the construction of sections 7 and 8 of the Pure Food and Drugs Act. Prior sections forbid in general terms of the manufacture and shipment in interstate commerce of any article of food or drugs which is adulterated or misbranded. Those two sections (7 and 8) undertake to define the words 'adulterated' and 'misbranded' as used in the statute. Had they been phrased in general terms, it might not be difficult to construe and apply them to the concrete facts of each case as they are developed on a trial. But the draftsman apparently thought that the more words he used the more plainly would he express the meaning intended. Not unnaturally an opposite result has been accomplished. The sections are most difficult of construction; possibly the phrasing of some of their provisions may operate to defeat the object probably intended. But we cannot rewrite the sections; if amendment be needed to make the act effective, that will be a matter for the consideration of Congress."

"Added" ingredient injurious to health
—An ingredient may be an "added" one

though it is a constituent of a food product having a distinctive name, as for example, caffeine in coca cola. *U. S. v. Forty Barrels, etc., of Coca Cola*, (1916) 241 U. S. 265, 36 S. Ct. 573, 60 U. S. (L. ed.) 995, Ann. Cas. 1917C 487, *reversing* (E. D. Tenn. 1911) 191 Fed. 431, (C. C. A. 6th Cir. 1914) 215 Fed. 535, 132 C. C. A. 47.

Whether an added ingredient is poisonous or deleterious is a question for the jury where the evidence is conflicting. *U. S. v. Forty Barrels, etc., of Coca Cola*, (1916) 241 U. S. 265, 36 S. Ct. 573, 60 U. S. (L. ed.) 995, Ann. Cas. 1917C 487, *reversing* (E. D. Tenn. 1911) 191 Fed. 431, (C. C. A. 6th Cir. 1914) 215 Fed. 535, 132 C. C. A. 47.

Injurious to health.—So the question whether the added ingredients would "reasonably have a tendency to injure health" should be left to the jury. *Weeks v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 69, 139 C. C. A. 631, *following U. S. v. Lexington Mill, etc., Co.*, (1914) 232 U. S. 399, 34 S. Ct. 337, 58 U. S. (L. ed.) 658, L. R. A. 1915B 774.

An article labeled "Grain Alcohol Varnish" consisting of shellac dissolved in alcohol and used for a glazing on cheap candies was held an adulterated article, it appearing that it contained an added ingredient, to wit, arsenic, which the jury considered sufficient in quantity to make it an article which "may be injurious to health." *Weeks v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 69, 139 C. C. A. 631.

Macaroons are not adulterated by the addition of glucose. *Washburn v. U. S.*, (C. C. A. 1st Cir. 1915) 224 Fed. 395, 140 C. C. A. 81.

Imitation of grape essence.—A bottled article labeled "Compound Ess Grape" but which in fact contained nothing from grapes and was a mere imitation artificially prepared, it was held, must be deemed adulterated within the general terms of this section. *U. S. v. Schides*, (1918) 246 U. S. 519, 38 S. Ct. 369, 62 U. S. (L. ed.) —.

1909 Supp., p. 139, sec. 8.

State statute on subject of misbranding.—Since Congress has not covered the field of disclosure of the ingredients of a food product designed for human consumption and moved or moving in interstate commerce from one state into another for sale there the several states in the exercise of the police power are at liberty and free to legislate on that subject, and lawfully provide by law for a disclosure of the name of the ingredients entering into the composition or compounding of such food mixtures, so long as the disclosure of the formula for compounding such food mixture is not required. *Crescent Mfg. Co. v. Wilson*, (N. D. N. Y. 1916) 233 Fed. 282, *following Savage v. Jones*, (1912) 225

U. S. 501, 32 S. Ct. 715, 56 U. S. (L. ed.) 1182.

Illustrations of misbranding—"Fruit Wild Cherry Compound."—An article of food labeled "Fruit Wild Cherry Compound" is misbranded if it consists chiefly of an imitation wild cherry essence artificially colored, but not if the dominant element is genuine fruit wild cherry, for "compound" indicates that the "fruit wild cherry" is in composition or combination with something else. *U. S. v. Weeks*, (S. D. N. Y. 1912) 225 Fed. 1017.

Lemon, etc.—An article labeled "Special Lemon. Lemon Terpene and Citral" was held not misbranded in *Weeks v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 64, 139 C. C. A. 626.

Macaroons.—In *Washburn v. U. S.*, (C. C. A. 1st Cir. 1915) 224 Fed. 395, 140 C. C. A. 81, it was held that whether an article of food labeled "macaroons" was misbranded by the fact that such article contained glucose depended on whether the jury found that glucose was an ingredient of macaroons. If it was not, then a misbranding occurred.

Macaroni.—In *U. S. v. Two Hundred and Sixty-Seven Boxes of Macaroni*, (W. D. Pa. 1915) 225 Fed. 79, the question involved was whether the labeling of each of many boxes of macaroni was misbranding as conveying the impression that the macaroni, which was in fact a domestic product, was foreign. The label read as follows: "Gusto Igiene Nettezza Pastificio Moderno Elettrico Con Prosciugazione Artificiale Vitello Brand Torre Annunziata (Italy Method) Mfg. U. S. A." It was held that a misbranding was shown. "Ohio Claret Wine."—Where barrels branded and labeled "Ohio Claret Wine" contain only pomace wine there is a misbranding. *U. S. v. Sixty Barrels Wine*, (W. D. Mo. 1915) 225 Fed. 846.

"A distinctive name is a name that distinguishes." *U. S. v. Forty Barrels, etc., of Coca Cola*, (1916) 241 U. S. 265, 36 S. Ct. 573, 60 U. S. (L. ed.) 995, Ann. Cas. 1917C 487, *reversing* (E. D. Tenn. 1911) 191 Fed. 431, (C. C. A. 6th Cir. 1914) 215 Fed. 535, 132 C. C. A. 47.

Offering for sale under distinctive name—principal and agent.—This section defines misbranding as, *inter alia*, "offering an article for sale" under the distinctive name of another article, even though no label describing it as such other article be actually affixed to it, and since intent is not an element of the offense a principal may be held liable for an act of his sales agent although he had told him not to misdescribe the article. *Weeks v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 64, 139 C. C. A. 626.

1909 Supp., p. 141, sec. 10.

Shipment for use by consignee as raw material.—For a case wherein the remedy

in rem provided by this section was invoked, where adulterated butter had been shipped, not for sale, but intended for use by the consignee in the bakery business, see *U. S. v. Nine Barrels of Butter*, (S. D. N. Y. 1917) 241 Fed. 499, *following* *Hipolite Egg. Co. v. U. S.*, (1911) 220 U. S. 45, 31 S. Ct. 364, 55 U. S. (L. ed.) 364, cited in the note to this section par. in 1912 Supp., p. 1098.

Libel—Sufficiency.—A libel to condemn cases of "Buffalo Lithia Water," which alleges in effect that the seized property is branded, labeled and sold as lithia water, when in fact it is not lithia water, and that by reason of such branding the public is deceived and misled, is sufficient. Particular characterization of the water as a mineral water or a spring water is not necessary. *Goode v. U. S.*, (1915) 44 App. Cas. (D. C.) 162.

Rules and regulations inconsistent with statute.—For certain regulations providing for the so-called "Read test" to determine whether tea contains "artificial coloring or facing matter," held to be inconsistent with the statute, see *Macy v. Browne*, (C. C. A. 2d Cir. 1915) 224 Fed. 359, 140 C. C. A. 45, *reversing* (S. D. N. Y. 1914) 215 Fed. 456.

1909 Supp., p. 144. [Act of May 16, 1908.]

Construction.—The question to be answered upon every examination is: Are the teas of inferior purity, quality and fitness for consumption to the standards. Although the sentence is conjunctive, it may fairly be construed disjunctively, as providing that tea shall be prohibited which falls below the standard either in purity, in quality or in fitness for consumption. *Macy v. Browne*, (C. C. A. 2d Cir. 1915) 224 Fed. 359, 140 C. C. A. 45.

Coloring or facing matter.—Tea which is fully equal or superior to the standard, in purity, in quality and in fitness for consumption is not subject to rejection merely because it contains coloring or facing matter, "unless the coloring matter plus other impurities makes the tea below standard in purity, or the coloring matter makes the tea below standard in quality or the coloring matter makes the tea less fit for consumption than the standard." *Macy v. Browne*, (C. C. A. 2d Cir. 1915) 224 Fed. 359, 140 C. C. A.

45, *reversing* (S. D. N. Y. 1914) 215 Fed. 456.

Powers of board of examiners.—Within the field of investigation confided to them the board of examiners are the sole judges; but they have been given no authority to extend the field of investigation beyond the limits staked out by Congress. *Macy v. Browne*, (C. C. A. 2d Cir. 1915) 224 Fed. 359, 140 C. C. A. 45, *distinguishing* *Butterfield v. Stranahan*, (1904) 192 U. S. 470, 24 S. Ct. 349, 48 U. S. (L. ed.) 525.

1914 Supp., p. 145. [Act of Aug. 23, 1912.]

Misleading statements as to curative effects—Constitutionality.—The Sherley amendment is constitutional. *Seven Cases v. U. S.*, (1916) 239 U. S. 510, 36 S. Ct. 190, 60 U. S. (L. ed.) 411, L. R. A. 1916D 164.

The phrase "false and fraudulent" in the Sherley amendment must be taken with its accepted meaning, and then it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive, an intent which may be derived from the facts and circumstances but which must be established. *Seven Cases v. U. S.*, (1916) 239 U. S. 510, 36 S. Ct. 190, 60 U. S. (L. ed.) 411, L. R. A. 1916D 164.

Circulars contained in a package are affected by the Sherley amendment. *Seven Cases v. U. S.*, (1916) 239 U. S. 510, 36 S. Ct. 190, 60 U. S. (L. ed.) 411, L. R. A. 1916D 164.

Issues.—In a proceeding to forfeit drugs on the ground that they were misbranded as to their curative effects, the issues under this Act resolve themselves into two questions: First, were the statements regarding the curative or therapeutic effects false; and second, were they fraudulent? *Eleven Gross Packages, etc., v. U. S.*, (C. C. A. 3d Cir. 1916) 233 Fed. 71, 147 C. C. A. 141.

Misbranding—Imitation grape essence.—A bottled article labeled "Compound Ess Grape," but which in fact contained nothing from grapes, and was an imitation artificially manufactured, was held misbranded. *U. S. v. Schides*, (1918) 246 U. S. 519, 38 S. Ct. 369, 62 U. S. (L. ed.) —.

GAME ANIMALS AND BIRDS

1914 Supp., p. 148. [Migratory game birds, etc.]

Materiality in state prosecution.—In *State v. Carey*, (S. D. 1917) 165 N. W.

539, the appellant was tried and convicted upon an information charging him with the shipment of fifteen wild ducks to a point within the state in violation of a state statute making it unlawful to

ship, or caused to be shipped, wild ducks by any private or common carrier to any person within or without the state. Several reasons why the conviction was illegal were urged by appellant, but the principal ground relied upon was that the Act of Congress, commonly known as the federal Migratory Game Bird Law, placed all migratory game birds under federal protection, and thereby suspended all state laws in regard to the same subject; while, on the other hand, it was contended by the Attorney General that the said federal Act is unconstitutional

and did not have the effect claimed for it by the appellant. The court said: "But it nowhere in the record appears that the ducks in question were killed in violation of this law [the federal Act] or of any regulation made thereunder. So far as appears from the record, said ducks were lawfully killed and lawfully in the possession of the defendant at the time of the alleged shipment. Therefore it is immaterial to the issues in this case whether the said federal act is constitutional or not."

HABEAS CORPUS

Vol. III, p. 162, sec. 751.

Scope of writ.—Inquiry as confined to jurisdiction.—If a court has jurisdiction of the case, the writ of habeas corpus cannot be employed to retry the issues, whether of law, constitutional or other, or of fact. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

As substitute for writ of error.—It is a familiar rule that a writ of habeas corpus cannot be used as a writ of error, but only for the consideration of fundamental and jurisdictional questions. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

Review of proceedings of special tribunals.—Court-martial.—It is settled law that, if a military tribunal has jurisdiction to try a person charged with an offense against military law, the civil courts cannot interfere by writ of habeas corpus. *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

Enlistment of minors.—A minor, who enlists without the written consent of a parent or guardian, when such consent is required, becomes a soldier. His enlistment is not void, nor is it voidable in any event by him. He may be released from the service by a timely application of the parent or guardian having a superior right to his custody or control. But this application must be made with reasonable diligence, after the parent or guardian has acquired knowledge of the actual enlistment, and before an offense has been committed by him. After an offense has been committed by the minor against the Military Law, and especially after he has been placed under arrest and charges have been preferred against him, it is too late for the parent or guardian to oust the jurisdiction of the military authorities by an application to the civil courts for a writ of habeas corpus. *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

Habeas corpus lies to obtain the discharge of minors who have fraudulently enlisted in the United States army or navy, but the merits of the case will not be inquired into. *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056.

Immigration.—Defects in warrant of deportation.—Where a writ of habeas corpus is sued out after the hearing and the issuing of the warrant of deportation, an objection to the original warrant, as that it was signed by the Assistant Secretary of Labor and not by Secretary of Labor, comes too late, as the only object of the writ is to ascertain whether the petitioner can lawfully be detained in custody. *Moy Wing Sun v. Prentiss*, (C. C. A. 7th Cir. 1916) 234 Fed. 24, 148 C. C. A. 40.

Duplicious indictment.—A double charge in a single count of an indictment is no ground for discharge on habeas corpus. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

Vol. III, p. 167, sec. 753.

General principles.—Under the terms of this section, in order to entitle the applicant to the relief sought under writ of habeas corpus, it must appear that he is held in custody in violation of the Constitution of the United States. Second. That he cannot have relief on habeas corpus if he is held in custody by reason of conviction upon a criminal charge before a court having jurisdiction over the subject-matter of the offense, the place where it was committed and the person of the prisoner. Third. Mere errors of law, however serious, committed by the court in the exercise of its jurisdiction, cannot be reviewed by habeas corpus. The writ cannot be employed as a substitute for a writ of error. Fourth. A criminal prosecution in the courts of a state, based on the law not repugnant to the federal

Constitution and conducted according to the settled course of proceedings under the law of the state, so long as it includes notice and a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is "due process of law" in the constitutional sense. Fifth. The federal courts cannot review irregularity or erroneous rulings upon the trial, however serious, and habeas corpus will lie only where the judgment under which the prisoner is detained is shown to be absolutely void for want of jurisdiction in the court, either because such jurisdiction was absent at the beginning, or was lost in the course of the proceedings. Sixth. In determining the question whether the jurisdiction of the court was lost, the inquiry must not be confined to the proceedings and judgment of the trial court. The proceedings in the appellate tribunal are to be regarded as part of the process of law, and are to be considered in determining any question of deprivation of life or liberty under the federal Constitution. Seventh. Questions arising under the due process clause of the Fourteenth Amendment, instead of involving merely the jurisdiction of some court, in a broad sense involve the power and authority of the state itself. The prohibition is addressed to the state itself, and if a violation be threatened by one agency of the state, but prevented by another agency of higher authority, there is no violation by the state; and as the state determines what courts shall be established for the trial of offenses against her laws, it follows that the question whether a state is depriving a prisoner of his liberty without due process of law, under a law not violative of the federal Constitution, cannot be determined ordinarily, with fairness to the state, until the conclusion of the course of justice in its courts. Eighth. Under the liberal procedure on habeas corpus, a prisoner in custody pursuant to the final judgment of a state court may have a judicial inquiry in the federal courts into the very truth and substance of the causes of his detention, and, if necessary, to look beyond the record of his conviction sufficiently to test the jurisdiction of the state court to proceed to judgment against him. But the court should take into consideration the entire course of the proceedings in the state courts, and not merely a single step in the proceedings, and that consideration must be given, not only to the averments of the petition, but to the proceedings which the petition attacks. *Fier v. Steele*, (W. D. Pa. 1915) 228 Fed. 242, summarized from the opinion by Pitney, J., in *Leo M. Frank v. Mangum*, (1915) 237 U. S. 309, 35 S. Ct. 582, 59 U. S. (L. ed.) 969.

Soldiers—Jurisdiction of federal court.

—A federal court has power to issue a

writ of habeas corpus for the purpose of an inquiry into the cause of detention of a prisoner held by a state to answer to a criminal charge, where it is alleged by the petitioner that the act charged as a crime was committed by the prisoner in the performance of his duty as a soldier of the United States. It has authority to determine summarily, as a fact, whether or not such allegation is true, and, if found to be true, to discharge the prisoner on the ground that the state is without jurisdiction to try him for such act. *In re Wulzen*, (S. D. Ohio 1916) 235 Fed. 362.

But the writ should issue only in urgent cases, since the general jurisdiction in time of peace, of the civil courts of a state, over persons in the military service of the United States who are accused of a crime, or an offense against the person of a citizen, committed within the state, is not denied. *In re Wulzen*, (S. D. Ohio 1916) 235 Fed. 362.

Vol. III, p. 173, sec. 755.

When writ need not be awarded.—Where the petition for the writ sets out the cause of detention, the issuance of the writ is unnecessary to bring that upon the record by a return to the writ. *Horn v. Mitchell*, (C. C. A. 1st Cir. 1916) 232 Fed. 819, 147 C. C. A. 13.

Right of prisoner to appear in person at hearing of application.—A prisoner applying for a writ of habeas corpus is not entitled to appear in the District Court in person for the purpose of prosecuting his application for the writ. *Murdock v. Pollock*, (C. C. A. 8th Cir. 1915) 229 Fed. 392, 143 C. C. A. 512.

Person confined in insane asylum.—In *Hammon v. Hill*, (W. D. Pa. 1915) 228 Fed. 999, the facts were held insufficient to show that the relator, who was confined in an insane asylum, was entitled to a writ of habeas corpus.

Demurrer.—In *Horn v. Mitchell*, (D. C. Mass. 1915) 223 Fed. 549, affirmed (C. C. A. 1st Cir. 1916) 232 Fed. 819, 147 C. C. A. 13, the question arising whether a demurrer lay to a petition for habeas corpus, the court said: "It is contended by the petitioner that it does not, and that the court should not consider such cases, except upon the actual facts as established at a hearing. This petition is unusually full and explicit. I see no reason to doubt that it sets forth accurately and completely the substantial facts upon which the petitioner relies. No request to amend it has been made on his behalf; and it has not been suggested that any further material facts would or might be developed upon a hearing. It may be assumed, as was done in *Frank's Case*, *infra*, that the petition states all facts helpful to the prisoner. I greatly doubt whether a formal demurrer is necessary or proper in

a case heard upon a petition and an order to show cause why the writ should not issue. In view of Revised Statutes, § 755, it is, I think, sufficient if the respondent orally demurs, or, what amounts to the same thing, suggests to the court that the petition does not state a case entitling the petitioner to the writ."

Vol. III, p. 174, sec. 761.

"Dispose of the party as law and justice required.—It has been held that a defect in the warrant is no ground for the discharge of the petitioner on a writ of habeas corpus. The rule in all such cases made obligatory by this section is that the judge granting the writ shall on the hearing "dispose of the party as law and justice require." This means not as law and justice required at the time of the arrest, but as law and justice require at the time of the hearing. *Ong Seen v. Burnett*, (C. C. A. 9th Cir. 1916) 232 Fed. 850, 147 C. C. A. 44.

Military enlistment.—Where habeas corpus is brought by a parent to obtain the custody of a minor child for the purpose of avoiding his enlistment in the National Guard, the court will not order his surrender to the parent, where such minor was charged with the commission of military offenses while he was a soldier. The election by the father, evidenced by the writ of habeas corpus, to avoid his son's enlistment, terminated the right of the military authorities to detain the latter under the enlistment. But it did not terminate the right of such authorities to continue their custody of the minor for the time reasonably required for the exercise of the military jurisdiction brought into play by duly made charges of the commission of military offenses by the minor while he was a soldier. *Hoskins*

Dickerson, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056. See, also *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

Vol. III, p. 175, sec. 763.

Superseded—Appeals to Circuit Court of Appeals.—In *Hoskins v. Funk*, (C. C. A. 5th Cir. 1917) 239 Fed. 278, 152 C. C. A. 266, the court said: "It is not an order of the District Judge in vacation which is made subject to review by this court by section 129 of the Judicial Code. No statute has been found which purports to confer on this court the jurisdiction which section 763 of the Revised Statutes conferred on the Circuit Court to review 'the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued.' The conclusion reached in the case of *Webb v. York*, 74 Fed. 753, 21 C. C. A. 65, that, notwithstanding the absence of such a statute, the Circuit Courts of Appeals have in some way succeeded to the jurisdiction which the statute just quoted conferred on another court, is one in which we are unable to concur. The reasoning by which that conclusion was reached does not seem to us to be convincing. We have found no statute having the effect of conferring upon this court appellate jurisdiction to review such an order made by a District Judge in vacation as the appeal in this case seeks to present for review."

Vol. III, p. 176, sec. 764.

Effect of Act of March, 1891, creating Circuit Courts of Appeals.—The right of appeal direct to the Supreme Court exists in habeas corpus cases where a question is involved under section 5 of the Circuit Court of Appeals Act of 1891, now constituting Judicial Code, § 238, 1912 Supp., p. 231. Otherwise there is not such right of direct appeal, especially as the abolishment of the Circuit Courts by Judicial Code, 289, 1912 Supp., p. 249, "removed the last vestige of authority for an appeal" under R. S. sec. 764. *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700.

HEALTH AND QUARANTINE

Vol. III, p. 226, sec. 1.

Purpose of Act.—The Department of Agriculture, realizing the losses that were resulting to the hog raisers of the country from the promiscuous manufacture and distribution of anti-hog cholera serum, secured the enactment of the above law intended to regulate the preparation, sale, and distribution of such serum. *Hall v. State*, (1916) 100 Neb. 84, 158 N. W. 362, L. R. A. 1916F 136.

Validity of state statute giving licensed manufacturers exclusive right to sell

serum.—This Act provides that plants manufacturing serum shall be licensed and that they may not prepare it for shipment unless they are licensed. A United States veterinary license does not appear to have been provided for the use of a person, but for manufacturers of the serum. The license is to the plant, and therefore a state statute seeking to give to those manufacturers the exclusive right to sell the serum denies to the citizens of the state the right to sell it. *Hall v. State*, (1916) 100 Neb. 84, 158 N. W. 362, L. R. A. 1916F 136.

HOSPITALS AND ASYLUMS

Vol. III, p. 274, sec. 4844.

Indigency.—Indigency is a question of fact. To be indigent does not mean that a person must be a pauper. An insane person with insufficient estate to pay for his maintenance in the hospital for the insane, after providing for those who could claim his support, is indigent within the terms of the Revised Statutes. *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

And if a person can pay only "a portion, but not the whole," of the expense of maintenance, he is an indigent person within the provisions of this section. *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

Commitment under this section.—See *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

IMMIGRATION

1909 Supp., p. 162, sec. 2.

Countries affected by Act—Philippine Islands.—The immigration laws of the United States have been by Act of Congress carried to the Philippine Islands and authorized to be there put into effect under appropriate legislation by the Insular Government. See *Sui v. McCoy*, (1915) 239 U. S. 139, 36 S. Ct. 95, 60 U. S. (L. ed.) 183.

Persons likely to become a public charge.—The term "persons likely to become a public charge" is not limited to paupers or those liable to become such; "paupers" are mentioned in a separate class. *Lam Fung Yen v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 393; 147 C. C. A. 329, following the construction in *U. S. v. Williams*, (S. D. N. Y. 1910) 175 Fed. 274, where it was construed as including "not only those persons who through misfortune cannot be self-supporting, but also those who will not undertake honest pursuits, and who are likely to become periodically the inmates of prisons."

For evidence held insufficient to support a finding that an alien was likely to become a public charge, see *Greenwood v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 629, 147 C. C. A. 437; *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

Prostitution—Evidence.—For evidence held insufficient to establish the offense of prostitution, see *Chan Kam v. U. S.*, (C. C. A. 9th Cir. 1916) 232 Fed. 855, 147 C. C. A. 49; *reversing* (C. C. A. 9th Cir. 1916) 230 Fed. 990, 145 C. C. A. 184.

Crime involving moral turpitude—Evidence.—For evidence held insufficient to support a finding that an alien had been convicted of an offense involving moral turpitude, see *Greenwood v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 629, 147 C. C. A. 437.

Bond for admission of alien children.—

The fact that this section contains no direct provision for a bond for the admission of alien children under the age of 16 years does not preclude the acceptance of a bond for such purpose. *Illinois Surety Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 527, 143 C. C. A. 595; *Illinois Surety Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 533, 143 C. C. A. 601.

1909 Supp., p. 164, sec. 4.

Persons excluded.—It was not the intention of Congress to restrict the prohibition to manual laborers and not to apply it to those engaged in other employment. By this section all persons are excluded who do not come within the specified exemptions. The provisions are not limited to "labor" or "service" but are limited expressly by the exemptions. *Ex parte Toguchi*, (W. D. Wash. 1916) 238 Fed. 632.

The gist of the offense consists in the prepayment of transportation and the offense is committed when that is done, whether the contract laborers succeed in getting into the United States or not. *U. S. v. New York Cent., etc., R. Co.*, (N. D. N. Y. 1916) 232 Fed. 179, *affirmed* (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172.

Soliciting importation.—And accordingly it has been held that soliciting the importation of a contract laborer, although there is no actual entry into the United States, is an offense under the statute and the fact that the alien was prevented by the government from entering, would not make the offender guiltless. *U. S. v. Morrisey*, (C. C. A. 8th Cir. 1917) 245 Fed. 923, 158 C. C. A. 211, *following* *New York Cent., etc., R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172.

But in *U. S. v. River Spinning Co.*, (D. C. R. I. 1917) 243 Fed. 759, the court took the view that there must be an actual and completed migration or importation.

Issuing pass to alien contract laborer.—The issuing and delivering of a pass to an alien contract laborer by a corporation owning and operating lines reaching into a foreign country is a prepayment of transportation within the meaning of this section. *U. S. v. New York Cent., etc., & Co.*, (N. D. N. Y. 1916) 232 Fed. 179.

Alien seamen.—While the public and private vessels of every nation while on the high seas, and without the territorial limits of any state, are subject to the jurisdiction of the state to which they belong and are in many respects considered a part of its territory, it does not follow from this that a merchant vessel flying the American flag is a part of the United States within the immigration laws or that a sailor whose home is on the sea is a contract laborer within the purview of these laws. *Scharrenberg v. Dollar Steamship Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 970, 144 C. C. A. 252.

Salesman.—In *Ex parte Toguchi*, (W. D. Wash. 1916) 238 Fed. 632, which was an application for writ of habeas corpus, it appeared that the petitioner came from Japan to the United States to take a position as salesman in the store of his uncle who conducted a Japanese silk and dry goods and bamboo business in Detroit. The uncle sent to petitioner \$100 to apply on his expenses and told him to apply for more money on landing if needed. No salary was agreed upon to be paid to the petitioner. The Board of Immigration found that he came to the United States in violation of the alien contract labor provision of the Immigration Act, rejected him on that ground and ordered his deportation to Japan. The Secretary of Labor affirmed the finding of the Board. It was contended that the intent of Congress was to restrict the prohibition to manual laborers and not to apply it to those engaged in other employment. But, in denying the writ, the court held that all persons are excluded who do not come within the exemptions specified in the provisos of section 2; that the provisions are not limited to "labor" or "service" but are limited expressly by the exemptions. The fact that no salary is agreed upon is immaterial as a reasonable compensation would be implied.

1909 Supp., p. 164, sec. 5.

Contract laborer.—A section foreman without authority to go into a foreign land to secure laborers, was not acting within the line of his duty or scope of his authority, in arranging with and encouraging an alien to enter the country in violation of the Contract Labor Law, so as to charge a railroad company with a

violation of the Act, where there was no knowledge of nor acquiescence in the unauthorized act of such employee. *U. S. v. Chicago, etc., R. Co.*, (D. C. Idaho 1915) 228 Fed. 554.

Venue of action.—In an action to recover the statutory penalty provided by this section, the place of bringing suit is governed by section 43 of the Judicial Code (1912 Supp., p. 152) a re-enactment without change of R. S. sec. 732 (3 Fed. Stat. Ann. 94). *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

1909 Supp., p. 165, sec. 6.

Failure of alien to enter country.—The solicitation, by advertisement, of an alien to enter the country, constitutes the offense although such alien was prevented from entering the country by the government. *U. S. v. Morrissey*, (C. C. A. 8th Cir. 1917) 245 Fed. 923, 158 C. C. A. 211, following *New York Cent., etc., R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172, which affirmed (N. D. N. Y. 1916) 232 Fed. 179.

But in *U. S. v. River Spinning Co.*, (D. C. R. I. 1917) 243 Fed. 759, the court took a contrary view, holding that the penalty is incurred only when the migration or importation is a completed act.

1909 Supp., p. 165, sec. 7.

Jurisdiction of offense under White Slave Traffic Act.—Failure to file with the Commissioner General of Immigration the statement required by section 6 of the White Slave Traffic Act of June 25, 1910, (title WHITE SLAVE TRAFFIC, 1912 Supp., p. 419) is an offense committed at Washington, D. C., the office of such commissioner, and a person charged with such offense has the right to a trial within the District of Columbia, the District Court for the district of a state being without jurisdiction. *U. S. v. Lombardo*, (W. D. Wash. 1915) 228 Fed. 980.

1909 Supp., p. 166, sec. 10.

Fair hearing.—While the board's decision, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens affected with mental or physical disability which would bring them within the excluded classes, this does not mean that the certificate is to take the place of a fair hearing by the board. Such a construction would result in giving the inspecting medical officer, instead of the board, the power of final decision. *Billings v. Sitner*, (C. C. A. 1st Cir. 1915) 228 Fed. 315, 142 C. C. A. 607.

1909 Supp., p. 169, sec. 19.

Power of Congress.—It was within the power of Congress to provide for or authorize delay in the execution of an order

of deportation and a suspension of action thereunder for a reasonable time to serve some public purpose. *In re Aliens*, (N. D. N. Y. 1916) 231 Fed. 335.

Detention of alien.—It is not required that the detention of the alien be necessary or desired for the prosecution of a criminal offense under the Act. If his detention be necessary for the prosecution of a suit to recover a penalty for the violation of some provision of the immigration laws, such alien may be detained. *In re Aliens*, (N. D. N. Y. 1916). 231 Fed. 335.

Bail.—An alien subject to deportation but detained to be used as a witness may be admitted to bail pending his appearance in court as a witness. *In re Aliens*, (N. D. N. Y. 1916) 231 Fed. 335

1909 Supp., p. 170, sec. 20.

Entering in violation of law—Surreptitious entry.—The entry into the United States surreptitiously and without inspection, is sufficient in itself, irrespective of other considerations, to justify an order of deportation. *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 557, 156 C. C. A. 255; *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 559, 156 C. C. A. 257.

Limitation of time for deportation.—The jurisdiction of the Secretary of Labor depends upon the fact that the alien has entered the United States within the period of three years preceding his arrest by the immigration authorities. *Backus v. Owe Sam Goon*, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

In *Bun Chew v. Connell*, (C. C. A. 9th Cir. 1916) 233 Fed. 220, 147 C. C. A. 226 (affirming [S. D. Cal. 1915] 220 Fed. 387), it was held that the secretary has the full three years in which to begin proceedings, holding that the statute should be construed in analogy with the statutes of limitations in criminal cases.

Warrant of deportation—Designating place of deportation.—The warrant must designate the country to which the alien shall be taken on deportation. It is not enough that it directs deportation "to the country whence he came." An alien is not without right simply because he is subject to deportation. He cannot simply be sent away. He has a right under the Act to be returned to the country from which he came, and to be protected in that right, the warrant which authorizes the deportation should expressly name the country to which he is to be taken; and that right should not be left to the determination of the officer executing the warrant or to the transportation company which brought him in, as their judgment or convenience might dictate. *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

Postponing deportation pending proceedings in state court.—In the case of

In re Andrews, (D. C. Vt. 1916) 236 Fed. 300, it appeared that while the petitioner was in the custody of the United States Inspector of Immigration, confined in jail at St. Albans, Vt., awaiting her deportation to Canada, the Department of Labor, at the request of the state, postponed her deportation and surrendered her to the state authorities for the purpose of insuring her appearance as a witness for the state before a county court. The petitioner claimed that the Department of Labor had no right to allow her to be taken out of the custody of the immigration inspector and that she had the right to be deported forthwith. It was held that such surrender to the state authorities was proper on the well-settled rule that as a matter of comity between the federal and state governments either may surrender its custody of a prisoner to the other without the prisoner's consent. In such a case, the question of the jurisdiction and custody of the prisoner is one of comity between the governments, and not a personal right of the prisoner.

Place of deportation—Country whence he came.—In proceedings for the deportation of Chinese persons under this Act where it is shown that they came into this country from Canada, and there is no proof that they were born in China, evidence that they are Chinese is no proof that China is the land from whence they came and they should be returned to Canada instead of China. *U. S. v. Sisson*, (C. C. A. 2d Cir. 1916) 232 Fed. 599, 146 C. C. A. 557; *Yee Suey v. Berkshire*, (C. C. A. 5th Cir. 1916) 232 Fed. 143, 146 C. C. A. 335.

Where an alien, a native East Indian, entered the United States surreptitiously from Canada and it appeared that he had never acquired a domicile in Canada, it was held that he was properly ordered deported to India, the country whence he came. *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 557, 156 C. C. A. 255; *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 559, 156 C. C. A. 257.

Habeas corpus—Review by court.—On habeas corpus to determine the legality of detention in deportation proceedings, the court's inquiry is limited as to whether the applicant was accorded an impartial hearing, and cannot inquire into the sufficiency of probative facts or consider reasons for the conclusions reached by the immigration officers. The question is not, Would the court have come to the same conclusion? but, Was the petitioner accorded a fair hearing? *Ex parte Chin Doe Tung*, (W. D. Wash. 1916) 236 Fed. 1017.

Where an immigrant is ordered deported on the ground that there is danger of such immigrant becoming a public charge, the court cannot disturb this finding if there is evidence however slight to support the finding, but when there

is nothing to support such a charge, the court may rightfully hold that the detention and deportation of the immigrant is an abuse of power. *U. S. v. Howe*, (S. D. N. Y. 1916) 235 Fed. 990, wherein a writ of habeas corpus was sustained and the immigrant released on the ground that there was no evidence to hold the applicant for deportation.

Deportation of Chinese—Violation of Chinese Exclusion Act.—The Immigration Act applies to Chinese persons as well as other aliens and it applies to them when the ground of the proceeding is a violation of the Chinese Exclusion Act as distinguished from the Immigration Act. *Ex parte Woo Shing*, (N. D. Ohio 1915) 226 Fed. 141; *Ex parte Wong Yee Toon*, (D. C. Md. 1915) 227 Fed. 247; *Sibray v. U. S.*, (C. C. A. 3d Cir. 1915) 227 Fed. 1, 141 C. C. A. 555; *Ex parte Chun Woi San*, (N. D. Cal. 1914) 230 Fed. 538; *Lam Fung Yen v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 393, 147 C. C. A. 329.

But in *Ex parte Woo Jan*, (E. D. Ky. 1916) 228 Fed. 927, in an exhaustive discussion of this question, the court distinguishing *U. S. v. Wong You*, (1912) 223 U. S. 67, 32 S. Ct. 195, 56 U. S. (L. ed.) 354, held that the Immigration Act was not intended to apply to Chinese laborers when the ground of a proceeding for their deportation is a violation of the Chinese Exclusion Act. And see to the same effect *U. S. v. Prentis*, (N. D. Ill. 1916) 230 Fed. 935; *Lee Wong Hin v. Mayo*, (C. C. A. 5th Cir. 1917) 240 Fed. 368, 153 C. C. A. 294.

In proceedings to deport a Chinese under the provisions of the Immigration Law for a violation of the Chinese Exclusion Act, an omnibus charge that the alien is in the country in violation of such Act is so broad as to convey no idea of the specific reason for which the alien has been ordered deported. It should be made apparent on the record, that the alien knew just what was specifically urged against him and that he was given an opportunity to meet the specific charge. See *Ex parte Chun Woi San*, (N. D. Cal. 1914) 230 Fed. 538.

The court will not undertake to prescribe rules of evidence for the immigration department, but where the jurisdiction of the department depends upon the establishment of a certain fact, which fact, when established, takes the alien's case out of the jurisdiction of the courts of the United States where it is placed by the Chinese Exclusion Law, the court is entitled to regard, not perhaps the weight of the evidence but certainly the character of the evidence, by which such a transfer of jurisdiction is effected. *Ex parte Owe Sam Goon*, (N. D. Cal. 1915) 230 Fed. 654.

After the expiration of three years the deportation of a Chinese person, under the

Immigration Act, for a violation of the Chinese Exclusion Act, is unauthorized. *Moy Wing Sun v. Prentis*, (C. C. A. 7th Cir. 1916) 234 Fed. 24, 148 C. C. A. 40; *Wong Yuen v. Prentis*, (C. C. A. 7th Cir. 1916) 234 Fed. 28, 148 C. C. A. 44; *Backus v. Owe Sam Goon*, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

If more than three years have elapsed since the entry, the government may proceed under the special Chinese Exclusion Act alone. *Wong Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 410, 157 C. C. A. 36.

Violation of Immigration Act.—A Chinese alien who secures admission into the United States in violation of this section, is subject to deportation under the provisions of this Act, at any time within three years after the date of his entry. *Mok Nuey Tau v. White*, (C. C. A. 9th Cir. 1917) 244 Fed. 742, 157 C. C. A. 190; *Quan You v. White*, (C. C. A. 9th Cir. 1917) 244 Fed. 746, 157 C. C. A. 194.

1909 Supp., p. 170, sec. 21.

It is the duty of the Secretary of Commerce and Labor to satisfy himself that the alien has been found in the United States in violation of law and therefore subject to deportation, and being so satisfied, shall cause such alien to be returned to the country whence he came. The Secretary of Commerce and Labor cannot delegate or depute to a commissioner of immigration these duties nor leave it to such commissioner to be satisfied whether the law has been violated. *Low Kwai v. Backus*, (C. C. A. 9th Cir. 1916) 229 Fed. 481, 143 C. C. A. 549, wherein it appeared that the acting commissioner of immigration undertook to satisfy the Secretary of Commerce and Labor that the alien in question had violated the law.

Review by court.—On habeas corpus to determine the legality of detention in deportation proceedings, the court's inquiry is limited as to whether the applicant was accorded an impartial hearing, and cannot inquire into the sufficiency of probative facts or consider reasons for the conclusions reached by the immigration officers. The question is not, Would the court have come to the same conclusion? but, Was the petitioner accorded a fair hearing? *Ex parte Chin Doe Tung*, (W. D. Wash. 1916) 236 Fed. 1017.

1909 Supp., p. 172, sec. 24.

Limitation on authority to administer oath.—Under this section immigration officers have power to administer oaths and take and consider evidence touching the right of an alien to enter the United States; but they have no power to administer oaths in an inquiry relating to the deportation of an alien. *Backus v. Owe*

Sam Goon, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

1909 Supp., p. 172, sec. 25.

Hearing—"Public."—Counsel for a party are not "the public" as that word is used in this section. *In re Madeiros*, (D. C. Mass. 1914) 225 Fed. 90.

The term "officials" as used in this section includes "clerks." *Ex parte Momo Tomimatsu*, (N. D. Cal. 1916) 232 Fed. 376.

Due process of law.—Due process of law does not necessarily require a judicial trial and Congress may intrust the decision of an immigrant's right to enter to an executive officer, even though denial of admission may deprive him of his liberty. *Ex parte Chin Own*, (W. D. Wash. 1917) 239 Fed. 391, following *U. S. v. Ju Toy*, (1905) 198 U. S. 253, 25 S. Ct. 644, 49 U. S. (L. ed.) 1040.

Decision of collector of customs.—A favorable decision by a collector of customs permitting a Chinese person to enter the United States is not a final or conclusive adjudication but is subject to re-examination by the courts. *Ex parte Chin Own*, (W. D. Wash. 1917) 239 Fed. 391.

Finality of decision of secretary.—The long series of decisions holding that hearings before the executive officers, and their orders made within the authority of the statute are final, is continued in *Chu Tai Ngan v. Backus*, (C. C. A. 9th Cir. 1915) 226 Fed. 446, 141 C. C. A. 276; *Ex parte Chin Him*, (W. D. N. Y. 1915) 227 Fed. 131; *Ung Bak Foon v. Prentiss*, (C. C. A. 7th Cir. 1915) 227 Fed. 406, 142 C. C. A. 102; *Lam Fung Yen v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 393, 147 C. C. A. 329.

1909 Supp., p. 173, sec. 26.

Voluntary bond.—See *U. S. v. Rubin*, (E. D. Pa. 1915) 227 Fed. 938.

1909 Supp., p. 175, sec. 35.

Deportation to China.—For evidence held sufficient to support the deportation of aliens to China, the land of their nativity, rather than to Canada, through which country they entered the United States, see *Wallis v. U. S.*, (C. C. A. 5th Cir. 1916) 230 Fed. 71, 144 C. C. A. 369. See also *Wallis v. Fei Nei*, (C. C. A. 5th Cir. 1916) 230 Fed. 77, 144 C. C. A. 375. See further the note *Place of deportation—Country whence he came*, under section 20, *supra*, p. 1205.

1909 Supp., p. 175, sec. 36.

Purpose of section.—The plain purpose of this section, when considered with other pertinent parts of the Act, is to require all aliens who enter the United States to submit themselves to inspection when they

so enter. If they enter at seaports they are inspected at the place of landing, and if not at seaports, they must present themselves for inspection at the places designated by the secretary for that purpose. The Act justly places the burden on the alien to present himself at the proper place. It does not contemplate nor permit that he shall walk by, and if unobserved, then be entitled to claim that he is in by right; but to the contrary, the section expressly declares that he is thus unlawfully in the country and shall be deported. *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

Expatriated citizen.—Where a citizen of the United States, who with his family goes to Canada, and there later enlists in the army of that country for oversea service, making the necessary declarations, and takes an oath of allegiance that he will be faithful and bear true allegiance to His Majesty King George the Fifth, his heirs and successors, and that he will as in duty bound honestly and faithfully defend His Majesty, his heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of His Majesty, his heirs and successors, and of all the generals and officers set over him, so help him God, and actually enters the service, he thereby effectually expatriates himself. *Ex parte Griffin*, (N. D. N. Y. 1916) 237 Fed. 445.

1909 Supp., p. 175, sec. 37.

Right to hospital treatment.—In *Ex parte Momo Tomimatsu*, (N. D. Cal. 1916) 232 Fed. 376, it was held that the petitioner, a Japanese woman afflicted with trachoma, was not entitled to hospital treatment as a matter of right under this section, as her husband had not filed his declaration to become a citizen, and was incapable of doing so.

1909 Supp., p. 178, sec. 43.

The proviso of this section was not inserted for the purpose of giving a special form of trial or special privilege to Chinese immigrants, but for the express purpose of imposing upon such immigrants the obligations of the Immigrant Act, and also of making sure that the additional obligations of the Chinese Exclusion Act would not be disturbed or affected. *Ex parte Woo Shing*, (N. D. Ohio 1915) 226 Fed. 141. See also the note *Deportation of Chinese under section 20, supra*, p. 1206.

1912 Supp., p. 90, sec. 2.

Construction.—Application to alien residing in Hawaiian Islands.—In *U. S. v. Kimi Yamamoto*, (C. C. A. 9th Cir. 1917) 240 Fed. 390, 153 C. C. A. 316, it appeared that the appellee came to the Hawaiian Islands in 1897 and had since

been a resident thereof. She was ordered deported upon proof of the charge that she practiced prostitution after entry into the United States. The court below, upon writ of habeas corpus issued to determine the legality of the order of deportation, entered an order of discharge, holding that persons who admittedly were residents of the territory of Hawaii before annexation thereof by the United States did not enter the United States within the meaning of this section. But the court on appeal reversed the order of discharge. To the same effect see *U. S. v. Sui Joy*, (C. C. A. 9th Cir. 1917) 240 Fed. 392, 153 C. C. A. 318.

Time for deportation—Vessel owner's liability after three years.—The amendment of 1910 struck out the three-year limitation. When, therefore, the time limit for deportation of this particular class of aliens was removed and they were ordered to be deported "in the manner provided in section 20," the three-year period mentioned in the later section was to be disregarded for all purposes. In other words, this particular class is to be deported at any time from the port of deportation at the expense of the owners of the vessel which brought them in. *Oceanic Steam Nav. Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 232 Fed. 591, 146 C. C. A. 549.

Owner of premises used for purpose of prostitution.—An alien landlord who leases to a prostitute the house in which

she practices prostitution and who receives from her rent therefor, is not within the classification of this section. *Katz v. Immigration Commissioner*, (C. C. A. 9th Cir. 1917) 245 Fed. 316, 157 C. C. A. 508, wherein error was assigned on account of the holding in the court below that the owner of a house in which prostitution was practiced and carried on and who received rent thereon from an inmate thereof was within the statute as one "deriving benefit from the earnings of a prostitute."

Evidence.—For evidence held to be insufficient to support a finding and recommendation of deportation of an alien on the ground that he was deriving benefit from the earnings of a prostitute, see *Katz v. Immigration Commissioner*, (C. C. A. 9th Cir. 1917) 245 Fed. 316, 157 C. C. A. 508; *Backus v. Katz*, (C. C. A. 9th Cir. 1917) 245 Fed. 320, 157 C. C. A. 512.

Fair trial.—Where, in proceedings to deport an alien woman on the ground that she was practicing prostitution, she admitted the charge in a signed and sworn statement and was then asked if she desired counsel, and the counsel then appearing in her behalf stated that he did not desire to offer any further evidence or to file a brief, an objection that she had no fair hearing before the immigration authorities was untenable. *Toku Saki v. U. S.*, (C. C. A. 9th Cir. 1917) 239 Fed. 492, 152 C. C. A. 370.

IMPORTS AND EXPORTS

Vol. X, p. 115, sec. 27.

Purpose of provision.—The obvious purpose of this provision is to protect the public and to prevent any one from importing goods identified by their registered trademark which are not genuine. But it does not protect the owner of a registered trademark against the importation by third parties of the genuine article under that trademark. *Fred Gretsck Mfg. Co. v. Schoening*, (C. C. A. 2d Cir. 1916) 238 Fed. 780, 151 C. C. A. 630.

1916 Supp., p. 62, sec. 1.

Constitutionality.—This Act is not unconstitutional in so far as it attempts to make penal the keeping and transportation of opium within the limits of a state and as being in conflict with the police power of the state. *Shepard v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 73, 149 C. C. A. 283, following *Brolan v. U. S.*, (1915) 236 U. S. 216, 35 S. Ct. 285, 59 U. S. (L. ed.) 544, wherein this objection to the statute was held to be so

utterly devoid of merit as to be frivolous. To the same effect, see *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

Cited without specific application in a comparison with section 8 of the Act of Dec. 17, 1914, ch. 1 (see title *INTERNAL REVENUE*, 1916 Supp., p. 106); in *Wilson v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 344, 143 C. C. A. 464.

1916 Supp., p. 62, sec. 2.

Validity of statute—Possession proof of guilt.—"The statute has laid down a rule, not of substantive law at all, but merely of evidence. It does not in any way conclusively shut out all evidence from defendant; it has declared that, a prima facie case being made, the duty of producing evidence to avoid the effect of such prima facie case is upon the defendant. The great weight of authority confirms our belief that such a law is in no way in excess of power." *Ng Choy Fong v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 305, 157 C. C. A. 497.

Effect of statute.—The effect of this law is to put upon every person in the United States the burden of refusing to deal with what is upon its face contraband, unless he can show its innocent character. If, under those circumstances, he takes into his possession an article which is thus labeled contraband, he commits a violation of the statute which renders him liable to punishment unless thereafter he can save himself by obtaining the proof which he should have required before purchasing the article. *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

Instructions.—In a prosecution on an indictment for conspiring to commit a crime against the United States by importing opium from Mexico, the Trial Court, in charging the jury, quoted the provisions of this Act. Error was assigned to that portion of the charge, but the court declined to review it, no exception having been taken. *Andrews v. U. S.*,

(C. C. A. 9th Cir. 1915) 224 Fed. 418, 139 C. C. A. 646.

1916 Supp., p. 63, sec. 3.

Effect of section.—By the provisions of this section the opium itself is presumed to have been imported illegally, and the burden of rebutting that presumption is on the defendant as well as the burden of explaining his possession so as to relieve himself of knowledge as to the importation. This leaves the defendant in the situation of being liable to an accusation that he was in the possession of material presumed to be contraband and presumed to have been brought into the country unlawfully, unless he can show either a certificate or clear chain of title and history of the article, carrying it back of a possible contraband source. *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

INDIANS

Vol. III, p. 384, sec. 1.

"Indian country."—A station platform on a railway right of way through the heart of the Crow Indian Reservation is Indian country within the meaning of this Act. *U. S. v. Soldana*, (1918) 246 U. S. 530, 38 S. Ct. 357, 62 U. S. (L. ed.) —.

Introducing liquor into Indian country.—The mere transportation of liquor across an Indian allotment is not by itself a violation of this Act. *Butterfield v. U. S.*, (C. C. A. 8th Cir. 1917) 241 Fed. 556, 154 C. C. A. 332.

Vol. III, p. 385, sec. 2140.

Forfeiture.—By the construction of the courts forfeiture, under this section, has been confined to the interest only of the person guilty of the introduction, so that only where the vehicles were actually owned by the person using them in violating the law, could they be condemned and forfeited. See *U. S. v. One Buick Roadster Automobile*, (E. D. Okla. 1917) 244 Fed. 961.

Amendment.—The Act of March 2, 1917, effected an amendment of this section by an extension of its provisions, so that as to seizure, libel and forfeiture of vehicles it was operative, not only in what is strictly Indian country but also in any other places where the introduction of such intoxicants is prohibited by treaty or federal statute. *U. S. v. One Buick Roadster Automobile*, (E. D. Okla. 1917) 244 Fed. 961.

Vol. III, p. 406, sec. 31.

Effect of Arkansas laws in Indian Territory.—See *Gidney v. Chappel*, (1916) 241 U. S. 99, 36 S. Ct. 492, 60 U. S. (L. ed.) 910.

Vol. III, p. 414, sec. 38.

Evidence.—Evidence that an Indian man and woman held themselves out as man and wife and were reputed to be married and that it was customary to disregard solemnization before a judge or clergyman, warrants a finding of compliance with all the requisites to validate the marriage under this section. *Carney v. Chapman*, (1917) 247 U. S. 102, 38 S. Ct. 449, 62 U. S. (L. ed.) 595.

Vol. III, p. 424, sec. 8.

Gist of the offense.—The gist of the offense denounced by this section is the carrying of liquor into the Indian Territory from without the state of Oklahoma. The mere possession of whisky by any person within that part of the state known formerly as Indian Territory, without any proof of where it came from, or when it was brought into that territory, constitutes no federal offense and is wholly insufficient to justify conviction under this Act. *Collier v. U. S.*, (C. C. A. 8th Cir. 1915) 221 Fed. 64, 137 C. C. A. 86; *Lewellen v. U. S.*, (C. C. A. 8th Cir. 1915) 223 Fed. 18, 138 C. C. A. 432.

Vol. III, p. 449, sec. 21.

Conclusiveness of decree of Dawes Commission.—Where the decision of the Commission to place the name of an Indian on the roll of Creek citizens by blood, as one entitled to be enrolled and to participate in the division of the tribal lands, it cannot be retried in the courts when not impeached for fraud or mistake, where such decision has been followed by the action of the Interior Department confirming allotment and ordering the patents conveying the lands. *U. S. v. Wildcat*, (1917) 244 U. S. 111, 37 S. Ct. 561, 61 U. S. (L. ed.) 1024.

Vol. III, p. 453, sec. 29.

Rights of occupancy.—Any existing rights of occupancy of a Chickasaw town site lot, except such as coincided with the ownership of permanent improvements thereon, terminated upon the taking effect of the Atoka Agreement of April 23, 1897, embraced in this section, conferring a preferential right of purchase upon owners of such improvements on Choctaw and Chickasaw town site lots, or at least when its town site provisions were put in operation at Chickasaw. *Johnson v. Riddle*, (1915) 240 U. S. 467, 36 S. Ct. 393, 60 U. S. (L. ed.) 752.

Vol. III, p. 490, sec. 15.

Restrictions on alienation.—An Indian who had made a homestead entry under this Act and had substantially performed the conditions entitling him to a patent, except the making of final proof, at the date of the passage of the Act of July 4, 1884 (vol. 3, p. 491), is not affected by the provisions of the latter Act that such Indians as might then be located on the public lands, or should thereafter so locate, might avail themselves of the homestead laws, but that patents issued thereunder should contain a twenty-five years' limitation upon alienation. *U. S. v. Hemmer*, (1916) 241 U. S. 379, 36 S. Ct. 659, 60 U. S. (L. ed.) 1055, *affirming* (C. C. A. 8th Cir. 1912) 204 Fed. 898, 123 C. C. A. 194.

Vol. III, p. 491. [Act of July 4, 1884.]

This Act did not repeal, amend or modify any of the provisions of the Act of March 3, 1875, ch. 131, § 15 (vol. 3, p. 490), and did not extend from five years to twenty-five years the restriction of the lands acquired by an Indian homesteader under the earlier Act. *U. S. v. Hemmer*, (1916) 241 U. S. 379, 36 S. Ct. 659, 60 U. S. (L. ed.) 1055, *affirming* (C. C. A. 8th Cir. 1912) 204 Fed. 898, 123 C. C. A. 194.

Cancellation of patents.—The land office has no authority to cancel a trust

patent to a homestead obtained under this Act and issue a new patent without restriction on alienation under section 6 of the Act of Feb. 8, 1887 (vol. 3, p. 496). *Seaples v. Card*, (E. D. Wash. 1915) 246 Fed. 501.

Vol. III, p. 496, sec. 6.

Restrictions on alienation.—Where a trust patent to a homestead was obtained under the Act of July 4, 1884 (vol. 3, p. 491), the land office has no authority to cancel such patent and issue a new one without restrictions on alienation under this section. *Seaples v. Card*, (E. D. Wash. 1915) 246 Fed. 501.

Vol. III, p. 500, sec. 3.

Oil and gas lease of Indian lands.—Taxation.—A state may not, when assessing for purposes of taxation the corporate assignee of an oil and gas lease of Osage lands, made under the authority of this Act, include in such assessment the lease and rights thereunder, either as separate objects of taxation, or as represented or valued by the stock of the corporation. *Indian Territory Illuminating Oil Co. v. Oklahoma*, (1916) 240 U. S. 522, 36 S. Ct. 453, 60 U. S. (L. ed.) 779.

Vol. III, p. 503, sec. 1.

Jurisdiction.—Repeal.—In *Hallowell v. Commons*, (1916) 239 U. S. 506, 36 S. Ct. 202, 60 U. S. (L. ed.) 409, *affirming* (C. C. A. 8th Cir. 1914) 210 Fed. 793, 127 C. C. A. 343, the court said: "This Act [Act of June 25, 1910, ch. 431, 1912 Supp., p. 96] restored to the secretary the power that had been taken from him by Acts of Aug. 15, 1894, ch. 290, 28 Stat. L. 305, and Feb. 6, 1901, ch. 217, 31 Stat. L. 760 (vol. 3, p. 503); *McKay v. Kalyton*, (1907) 204 U. S. 458, 468, 27 S. Ct. 346, 51 U. S. (L. ed.) 566, 570. It made his jurisdiction exclusive in terms, it made no exception for pending litigation, but purported to be universal and so to take away the jurisdiction that for a time had been conferred upon the courts of the United States."

Vol. III, p. 505, sec. 7.

Validity.—Congress had power to remove the restrictions originally imposed upon alienation by heirs. *Egan v. McDonald*, (1918) 246 U. S. 227, 38 S. Ct. 223, 62 U. S. (L. ed.) —, *affirming* (1915) 36 S. D. 92, 153 N. W. 915.

Vol. X, p. 150, sec. 16.

Surplus lands in possession of heirs.—Surplus lands when in the hands of the heirs of a Chickasaw allottee, as well as when in the ownership of the original allottee, are bound by all the restrictions on alienation imposed by this and the pre-

ceding section 15. *Gannon v. Johnston*, (1917) 243 U. S. 108, 37 S. Ct. 330, 61 U. S. (L. ed.) 622.

Vol. X, p. 150, sec. 19.

Excessive inclosure of holdings.—Indian citizens were not given the right under sections 19–21 of this Act, to revive and reassert long dormant claims to Choctaw and Chickasaw lands after others had entered into possession of and highly improved the lands. *Hill v. Reynolds*, (1917) 242 U. S. 361, 37 S. Ct. 163, 61 U. S. (L. ed.) 363.

Vol. X, p. 151, sec. 23.

Nature of title.—The title conferred by the allotment is an equitable one with supervisory power remaining in the Secretary of the Interior. *Duncan Townsite Co. v. Lane*, (1917) 245 U. S. 308, 38 S. Ct. 99, 62 U. S. (L. ed.) —.

Allotment certificates as evidence.—The provision that allotment certificates issued by the Commission to the Five Civilized tribes shall be conclusive evidence of the right of any allottee to the tract described therein, has relation to rights between the holder and third parties. *Duncan Townsite Co. v. Lane*, (1917) 245 U. S. 308, 38 S. Ct. 99, 62 U. S. (L. ed.) —.

Certificates of allotment, like receiver's receipts under the general land laws, entitle the holder to exclusive possession of the premises. *Duncan Townsite Co. v. Lane*, (1917) 245 U. S. 308, 38 S. Ct. 99, 62 U. S. (L. ed.) —.

1909 Supp., p. 192, sec. 3.

Effect of enrollment.—Enrollment confers rights which cannot be taken away without notice and opportunity to be heard. But enrollment may be canceled by the Secretary of the Interior for fraud or mistake. *Duncan Townsite Co. v. Lane*, (1917) 245 U. S. 308, 38 S. Ct. 99, 62 U. S. (L. ed.) —.

1909 Supp., p. 198, sec. 19.

Osage Indian allotments.—Restrictions on alienation by nonmembers of tribe.—The restrictions on alienation of Osage Indian allotments, imposed by Act of June 28, 1906, ch. 3572 (1909 Supp., p. 219), do not apply to lands or any interest therein which have come into the possession of a white man not a member of the tribe, under allotments made in the right of certain deceased Indians to their respective heirs: *Levindale Lead, etc., Min. Co. v. Coleman*, (1916) 241 U. S. 432, 36 S. Ct. 644, 60 U. S. (L. ed.) 1080.

Taxation.—The exemption from taxation of lands allotted to an Indian under former acts is not, in view of this section, available to his grantees. *Sweet v. Schock*, (1917) 245 U. S. 192, 38 S. Ct. 101, 62 U. S. (L. ed.) —.

1909 Supp., p. 200, sec. 22.

Validity of statute.—A statute requiring approval by the Secretary of the Interior of conveyances made by a tribal Indian is not unconstitutional, even as applied to land upon the conveyance of which no such obstruction existed at the time of its enactment, and notwithstanding the admission of its owner to citizenship. *Brader v. James*, (1918) 246 U. S. 88, 38 S. Ct. 285, 62 U. S. (L. ed.) —, *affirming* (1916) 49 Okla. 734, 154 Pac. 560.

Allotment to representative of deceased Indian.—Restrictions.—The restrictions made by the provisions of this section apply as well in a case where selection has been made as provided by section 20 of the Cherokee Agreement (32 Stat. L. 716, ch. 1375), by the duly appointed executor or administrator of an Indian who died before receiving his allotment, as to a case where the land was selected by the ancestor in his lifetime. *Talley v. Burgess*, (1918) 246 U. S. 104, 38 S. Ct. 287, 62 U. S. (L. ed.) —, *affirming* (1915) 46 Okla. 550, 149 Pac. 120.

Approval by Secretary of Interior.—The approval of the Secretary of the Interior is, by this section, made a condition of a valid conveyance by the heirs of a deceased allottee of either of the Five Civilized Tribes and must be obtained in the case of land as to which the original restriction upon alienation by the allottee or his heirs had expired before its enactment. *Brader v. James*, (1918) 246 U. S. 88, 38 S. Ct. 285, 62 U. S. (L. ed.) —, *affirming* (1916) 49 Okla. 734, 154 Pac. 560.

Conveyance by minor heir of allottee.—Approval by court.—Read as a whole and construed in the light of the purpose to be accomplished this section requires approval by the United States court for the Indian Territory of conveyances made by the guardian of minor heirs of a deceased Indian allottee. *Talley v. Burgess*, (1918) 246 U. S. 104, 38 S. Ct. 287, 62 U. S. (L. ed.) —, *affirming* (1915) 46 Okla. 550, 149 Pac. 120.

Conclusiveness of citizenship roll.—The approved Seminole citizenship roll must be deemed conclusive as to the amount of Indian blood of an enrolled member of that tribe when testing his right under this section to convey his lands. *U. S. v. Ferguson*, (1917) 38 S. Ct. 434, 62 U. S. (L. ed.) 592, *affirming* (C. C. A. 8th Cir. 1915) 225 Fed. 974, 141 C. C. A. 96.

1909 Supp., p. 216. [Alienation restrictions removed, etc.]

Avoiding conveyances of Indian allotments.—The United States without capacity to bring suit in behalf of Indian grantors to set aside, because of the fraud of the grantees and the incapacity of such grantors, certain conveyances by

adult mixed-blood Chippewa Indians of their patented allotments in the White Earth Indian Reservation, where such conveyances were made after the adoption of this Act. *U. S. v. Waller*, (1917) 243 U. S. 452, 37 S. Ct. 430, 61 U. S. (L. ed.) 843.

1909 Supp., p. 228. [*Noncompetent Indians*]

Avoiding conveyances of Indian allotments.—The United States was without capacity to bring suit on behalf of Indian grantors to set aside, because of the fraud of the grantees and the incapacity of such grantors, certain conveyances by adult mixed blood Chippewa Indians of their patented allotments in the White Earth Indian Reservation, where such conveyances were made after the adoption of the Act. *U. S. v. Waller*, (1917) 243 U. S. 452, 37 S. Ct. 430, 61 U. S. (L. ed.) 843.

1909 Supp., p. 233, sec. 2.

Discretionary power of Secretary of Interior.—The discretionary power of the Secretary of the Interior, under this section, with respect to the approval of oil and gas leases on Indian lands, was not exceeded when he gave such approval to that one of two leases for the same premises which was earlier in time, but later in filing for record with the Indian agency. *Anicker v. Gunsburg*, (1918) 246 U. S. 110, 38 S. Ct. 228, 62 U. S. (L. ed.) —, affirming (C. C. A. 8th Cir. 1915) 226 Fed. 176, 141 C. C. A. 174.

Renewal of lease for agricultural purposes.—A valid lease for agricultural purposes of a restricted Creek allotment may be made during the existence of a prior, valid lease, provided that it is made for a fair rental, near the termination of the existing lease, and that it does not extend the term more than five years from the date of the last lease. But where a lease by a Creek citizen of his restricted allotment is made for agricultural purposes, and before it expires another lease for agricultural purposes is made to the same lessee for a period of five years, to commence in the future, the last lease, not being approved by the Secretary of the Interior, is void. *Hudson v. Hildt*, (Okla. 1915) 151 Pac. 1063.

1909 Supp., p. 233, sec. 3.

Enrollment records as conclusive evidence of age.—The enrollment records of the Commissioner to the Five Civilized Tribes are conclusive evidence as to age of the members of said tribes and freedmen, on transactions had after the taking effect of this Act. *Miller v. Thompson*, (Okla. 1915) 151 Pac. 192.

1909 Supp., p. 233, sec. 4.

Taxation.—The exemption from taxation of lands allotted to an Indian under former Act is not, in view of this section, available to his grantees. *Sweet v. Schock*, (1917) 245 U. S. 192, 38 S. Ct. 101, 62 U. S. (L. ed.) —.

1912 Supp., p. 96, sec. 1.

Power and jurisdiction of Secretary of the Interior.—The Secretary of the Interior has exclusive jurisdiction under this statute to ascertain the legal heirs. *Hallowell v. Commons*, (1916) 239 U. S. 506, 36 S. Ct. 202, 60 U. S. (L. ed.) 409, affirming (C. C. A. 8th Cir. 1914) 210 Fed. 793, 127 C. C. A. 343.

Reopening decisions of Secretary of Interior.—An order of the Secretary of the Interior, recognizing the adopted children of a deceased Indian allottee as his heirs, though made final and conclusive by this Act, does not exhaust his power so as to permit the courts by mandamus to interfere with his action in reopening the matter for further consideration, where the property to which the order relates is still in the administrative control of the department because of the trust imposed by the law of the United States until the expiration of the statutory period. *Lane v. U. S.*, (1916) 241 U. S. 201, 36 S. Ct. 599, 60 U. S. (L. ed.) 956.

1912 Supp., p. 103, sec. 32.

Purpose of section.—"The intent and meaning of this statute, in our opinion, was to make the patented land part of the estate of the nominal patentee quoad hoc—the most important words being 'as if the deed had issued to the deceased grantee during life. The section was not intended to exclude other provisions of law otherwise applicable, and to give a title at all events to the heir or other party named in the Act as purchaser.'" *Erryman v. Woodward*, (1915) 238 U. S. 148, 35 S. Ct. 830, 59 U. S. (L. ed.) 1242.

1914 Supp., p. 164, sec. 5.

Governmental control.—The Secretary of the Interior is not empowered by this section to exercise control over private property purchased with trust funds released by him to an Osage Indian allottee. *McCurdy v. U. S.*, (1918) 246 U. S. 263, 38 S. Ct. 289, 62 U. S. (L. ed.) —.

State taxation.—Lands purchased from their private owners with trust funds released to an Osage Indian allottee by the Secretary of the Interior and conveyed first in trust and later by the trustee to the Indian individually, could not be exempted from state taxation by a clause in the deed from the trustee making the land inalienable without the consent of the Secretary of the Interior. *McCurdy v. U. S.*, (1918) 246 U. S. 263, 38 S. Ct. 289, 62 U. S. (L. ed.) —.

INTERNAL REVENUE

Vol. III, p. 577, sec. 3173.

Compelling production of books.—Under this section the Commissioner of Internal Revenue may compel the production of books by one who has become subject to the stamp tax on agreements of sale imposed by the War Revenue Act of Oct. 22, 1914, ch. 331, § 22, 1916 Supp., p. 95; and an order to produce books is not violative of any constitutional right. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

This section was amended in the War Revenue Act of Sept. 8, 1916, ch. 463, § 16, *ante*, this volume, title INTERNAL REVENUE, p. 280.

Vol. III, p. 583, sec. 3182.

Power to assess stamp taxes is given by this section, and is not taken away by R. S. sec. 3176, vol. III, p. 580, as amended in Act of Sept. 8, 1916, ch. 463, § 16, *ante*, this volume, title INTERNAL REVENUE, p. 281; "section 3182 is most general, comprehensive, and inclusive, and was unquestionably intended to give, and did give, the Commissioner of Internal Revenue authority to make assessments 'of any tax imposed by this title,' being 'Title XXXV—Internal Revenue' . . . In other words Congress gave the Commissioner of Internal Revenue authority to make assessment of all taxes that were imposed by Congressional enactment, and which came under the heading of 'Internal Revenue.'" *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

This section authorizes assessment of penalties arising under the Act of Oct. 22, 1914, ch. 331, 1916 Supp., p. 80, *et seq.*, when the section is construed with other provisions of the statutes. *Kohlhamer v. Smietanka*, (N. D. Ill. 1917) 239 Fed. 408.

Vol. III, p. 597, sec. 3220.

Statutory remedy exclusive.—The remedy to recover back an internal revenue tax after paid is exclusively as specified in the statute, and the provisions of this section and R. S. secs. 3226, 3227 and 3228 (vol. III, pp. 601, 603) must be strictly complied with. *Public Service Gas Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 496.

Limitation.—Two years after the payment of an illegal tax is the time within which, under R. S. sec. 3228, vol. III, p. 603, the right of recovery provided for by this section may be pursued. *Public Service R. Co. v. Herold*, (C. C. A. 3d Cir. 1916) 229 Fed. 902, 144 C. C. A. 184.

An adverse decision by the commissioner does not operate to extend the time within which to begin suit for a refund. *Public Service R. Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 496.

Vol. III, p. 600, sec. 3224.

The only redress for an aggrieved taxpayer is the method provided in R. S. sec. 3226, vol. III, p. 601. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

"The word 'assessment,' as used in this section, cannot fairly be limited to the mental act of the officer who determines the amount. It must include the preliminary investigation as well as the final determination, for one is as important as the other." *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

The inhibition of this statute applies to the collection by the Internal Revenue Collector of penalties assessed under the Act of Oct. 22, 1914, ch. 331, § 23, 1916 Supp., p. 100. *Kohlhamer v. Smietanka*, (N. D. Ill. 1917) 239 Fed. 408.

Income Tax Law.—This section was held to be applicable to the Income Tax Law of 1913. *Dodge v. Osborn*, (1916) 240 U. S. 118, 36 S. Ct. 275, 60 U. S. (L. ed.) 557.

An application by a receiver for instructions whether to make a return under the federal Income Tax Act of 1913 was not affected by this section, such proceeding not being a suit to restrain the assessment or collection of a tax. *Scott v. Western Pac. R. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515.

Vol. III, p. 601, sec. 3226.

Payment under duress.—What may constitute duress is set forth by Justice Gray, speaking for the Circuit Court of Appeals for the third circuit in *Herold v. Kahn*, (C. C. A. 3d Cir. 1908) 159 Fed. 608, 86 C. C. A. 598, *quoted in* *Cambria Steel Co. v. McCoach*, (E. D. Pa. 1915) 225 Fed. 278, where the court said: "When . . . such duress is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby ought not to be regarded as voluntary."

Vol. III, p. 603, sec. 3227.

Limitation.—"No suit can be maintained under the law until an appeal has been taken to the commissioner. If on the appeal the claim is rejected, an action may be maintained against the collector (Rev. Stat., §§ 3226, 3227, 3228) and

through him, on establishing the error or illegality, a recovery can be had. When the Commissioner rendered his decision, rejecting plaintiff's claim, the right of action was complete. It was then that plaintiff had a right to bring this suit [against the collector], which was not barred when actually entered." *State Line, etc., R. Co. v. Davis*, (M. D. Pa. 1915) 228 Fed. 246.

Vol. III, p. 603, sec. 3228.

Sufficiency of presentation to commissioner.—Where in an action against the collector the plaintiff's statement of claim alleged that the claim was filed with the defendant on a day stated, and that after some correspondence between the parties, on consideration of the claim filed, the Commissioner of Internal Revenue rejected the same, and gave notice to the defendant collector, by letter of a stated date, who in turn notified the plaintiff two days later of the decision reached, the statement was sufficient as against an objection questioning the regularity of the appeal to the Internal Revenue Commissioner. *State Line, etc., R. Co. v. Davis*, (M. D. Pa. 1915) 228 Fed. 246.

Vol. III, p. 651, sec. 3280.

An indictment for unauthorized distillation of alcoholic spirits need not specify the particular kind of spirits which the defendant is accused of producing. Therefore, a specification thereof in the indictment may be regarded as surplusage. *Bullard v. U. S.*, (C. C. A. 4th Cir. 1917) 245 Fed. 837, 158 C. C. A. 177.

Vol. III, p. 787, sec. 3.

Contingent beneficial interests.—In *Uterhart v. U. S.*, (1916) 240 U. S. 598, 36 S. Ct. 417, 60 U. S. (L. ed.) 819, *reversing* (1914) 49 Ct. Cl. 709, it was held that the interests which the residuary legatees took by a will, the terms of which were there considered, as construed by a state court of competent jurisdiction, were contingent and not vested prior to July 1, 1902, within the meaning of this section.

Controlled by the decision in *Vanderbilt v. Eidman*, (1905) 196 U. S. 480, 25 S. Ct. 331, 49 U. S. (L. ed.) 563, it was held in *Rosenfeld v. Scott*, (C. C. A. 9th Cir. 1917) 245 Fed. 646, 158 C. C. A. 74, *reversing* (N. D. Cal. 1916) 232 Fed. 509, that certain life estates were contingent beneficial interests, and were not vested in possession or enjoyment prior to July 1, 1902.

Where a bequest of stock was made to an infant, the income to be collected by his guardian until he became of age, and applied to his necessary support and maintenance until he became of age, and

then the corpus to be transferred to him, his interest in the bequest was absolute and subject to no contingency. *Deford v. U. S.*, (1917) 52 Ct. Cl. 220.

In *Carleton v. U. S.*, (1916) 51 Ct. Cl. 60, a will bequeathed \$10,000 to "said Minnie A. Townsend, her heirs and assigns forever, the income from which shall be paid by said Minnie A. Townsend, annually or semiannually to my cousin, Mrs. Augusta H. Worthen, as long as said Augusta H. Worthen shall live." The court said: "It is true that Minnie A. Townsend did not enjoy it at once, but immediately upon passing from the possession of the executors of the will the whole corpus of the legacy was in the possession and enjoyment of the beneficiaries named in the will; and that was all the requirement of the war-revenue act to make it subject to taxation."

A tax paid without any protest or declaration of any intention to contest its validity is a voluntary payment and not recoverable. *Rand v. U. S.*, (1917) 52 Ct. Cl. 72.

Compliance with R. S. sec. 3226, vol. 3, p. 601, is essential before suit can be maintained for recovery under this statute of taxes paid. And said R. S. sec. 3226 is unaffected by the Act of July 27, 1912, ch. 256, vol. 4, p. 236. *Rand v. U. S.*, (1917) 52 Ct. Cl. 285.

1909 Supp., p. 829, sec. 38.

Constitutionality.—It is settled that the tax is valid as an excise on the privilege of doing business in a corporate capacity. *Philadelphia Traction Co. v. McCoach*, (E. D. Pa. 1915) 224 Fed. 800; *Blalock v. Georgia R., etc., Co.*, (C. C. A. 5th Cir. 1915) 228 Fed. 296, 142 C. C. A. 588, Ann. Cas. 1917A 679.

"The legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property from the time the act took effect." *Doyle v. Mitchell Bros. Co.*, (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) —.

Construction.—"The trend of judicial opinion has been to examine closely the phraseology of the act itself, and it must be construed in favor of taxation." *U. S. v. Guggenheim Exploration Co.*, (S. D. N. Y. 1917) 238 Fed. 231, per Manton, J.

A Treasury decision, promulgated for the guidance of revenue collectors, is entitled to some consideration in the construction of the statute, but cannot be given great weight in an action against a collector to recover taxes paid under protest, since the government is the real defendant "and, of course, courts cannot permit a party to a lawsuit to say what the rule of law for the decision shall be."

Grand Rapids, etc., *R. Co. v. Doyle*, (W. D. Mich. 1915) 245 Fed. 792.

The constitutionality of the Act was upheld by finding that the tax imposed is an excise tax and not a franchise, property or other direct tax. The Act must therefore be strictly construed as an excise tax. *Philadelphia Traction Co. v. McCoach*, (E. D. Pa. 1915) 224 Fed. 800.

Nature of tax.—The tax provided for by this section was not intended to be and was not in any proper sense an income tax, but an excise upon the carrying on or the doing of business in a corporate or quasi-corporate capacity; the amount of the tax being measured according to the income. *U. S. v. Whitridge*, (1913) 231 U. S. 144, 34 S. Ct. 24, 58 U. S. (L. ed.) 159; *National Bank of Commerce v. Allen*, (C. C. A. 8th Cir. 1915) 223 Fed. 472, 139 C. C. A. 20; *Philadelphia Traction Co. v. McCoach*, (E. D. Pa. 1915) 224 Fed. 800.

Corporations subject to tax—*Organized for profit.*—The Boston Terminal Company was held, under the facts found and stated in *Boston Terminal Co. v. Gill*, (C. C. A. 1st Cir. 1917) 246 Fed. 664, 158 C. C. A. 620, to be corporation "organized for profit," this conclusion being deemed to find strong support in *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

Joint-stock company.—A joint-stock company which exists without a special charter and has not been organized under any statute, but is created under articles of association or agreement, although its members do not possess the important corporate attribute of limited liability, may nevertheless be for all practical purposes a corporation and belong to that class of joint-stock companies which it was the intention of Congress to tax under this Act. *Roberts v. Anderson*, (C. C. A. 2d Cir. 1915) 226 Fed. 7, 141 C. C. A. 121.

A mutual protective association organized under a state statute, whose only source of revenue was assessments paid by its members, was held, under the facts of the case, to be an "insurance company" and to be "doing business" within the meaning of those terms in this Act. *Commercial Travelers' Life, etc., Ass'n v. Rodway*, (N. D. Ohio 1913) 235 Fed. 370.

Corporations formed by the owners of lands for the purpose of handling the property and distributing the proceeds of its disposition are organized for profit within the meaning of this section. *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

What constitutes "carrying on," "engaged in" or "doing business"—*Leasing of property and franchise by corporation.*

—Where there has been a practical surrender of all of the lessor's rights to operate and maintain, reserving the right of corporate existence, and where the use of such reserve corporate power is only for preserving the property leased or for enabling the lessee to do such things effectively as are reasonably incidental to the preservation of the property and the enjoyment by the lessee of the rights and privileges conveyed by the terms of the lease, there is not an engagement in business by the lessor. *Cambria Steel Co. v. McCoach*, (E. D. Pa. 1915) 225 Fed. 278; *Public Service Gas Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 496; *Public Service R. Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 500; *Waterbury Gaslight Co. v. Walsh*, (D. C. Conn. 1915) 228 Fed. 54; *State Line, etc., R. Co. v. Davis*, (M. D. Pa. 1915) 228 Fed. 246; *Public Service R. Co. v. Herold*, (C. C. A. 3d Cir. 1916) 229 Fed. 902, 144 C. C. A. 184; *Hudson County Gas Co. v. McCoach*, (C. C. A. 3d Cir. 1916) 229 Fed. 912, 144 (C. C. A. 194); *McCoach v. Continental Passenger R. Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 976, 147 C. C. A. 650.

In *Philadelphia, etc., R. Co. v. Lederer*, (E. D. Pa. 1917) 239 Fed. 184, an action to recover a tax paid under protest, "the facts in relation to the carrying on of business by the plaintiffs, as shown by the various leases under which the railroads were operated, clearly brought all of the plaintiffs within the law as laid down in the *Minchill Case*, 226 U. S. 295, 33 S. Ct. 419, 57 U. S. (L. ed.) 842."

But where, whether at its own instigation or that of the lessee, the lessor corporation exerts its corporate powers by an activity carried on to increase the estate of the lessor, or to do things more than reasonably necessary to enable the lessee to enjoy the rights in existence at the time of the lease and such rights as are incidental thereto, then the lessor company may be held to be engaged in the business for which it was incorporated, and is therefore brought within the statute. *Public Service Electric Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 486; *Public Service R. Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 490; *Public Service Electric Co. v. Herold*, (D. C. N. J. 1915) 227 Fed. 491; *Public Service R. Co. v. Moffett*, (D. C. N. J. 1915) 227 Fed. 494.

"If a corporation is doing the business for which it was organized the income derived from such business is taxable under the act. . . . If the purpose for which it was organized was to build and lease property, then the rents derived from such lease are taxable, even though thereby the corporation leases all the property and of necessity goes out of all corporate business excepting the collection and distribution of its rents." *Rio Grande Junc-*

tion R. Co. v. U. S., (1916) 51 Ct. Cl. 274.

Foreign corporation—Illustration.—Laurentide Co. v. Durey, (N. D. N. Y. 1916) 231 Fed. 223.

A street railway corporation which leased its lines and property in 1897 to another corporation, and has not since operated them itself is not a corporation "engaged in business" during that period. West End St. R. Co. v. Malley, (C. C. A. 1st Cir. 1917) 246 Fed. 625, 158 C. C. A. 581, where the question was regarded as controlled by the reasoning and result in the following cases: New York Cent., etc., R. Co. v. Gill, (C. C. A. 1st Cir. 1915) 219 Fed. 184, 134 C. C. A. 558; McCoach v. Continental Passenger R. Co., (C. C. A. 3d Cir. 1916) 233 Fed. 976, 147 C. C. A. 650; Jasper, etc., R. Co. v. Walker, (C. C. A. 5th Cir. 1917) 238 Fed. 533, 151 C. C. A. 469.

A street railway company which surrenders to another company the management and control of its physical possessions and transfers to the second company its right and franchise to operate its railway, reserving only its corporate existence and the right to receive and disburse its income, is not "doing business" within the meaning of the statute. Philadelphia Traction Co. v. McCoach, (E. C. Pa. 1915) 224 Fed. 800.

Contracts of sale.—In Bryant v. Scott, (N. D. Cal. 1914) 226 Fed. 875, it appeared that a foreign corporation made an executory contract of sale of its entire title and interest in all its property in the state and retired from all further participation or interest in the business and removed its office from the state. The contract of sale provided for partial payments on the purchase price during a series of years and that until the final payment the legal title should remain in the grantor as security for principal and interest. It was held that such corporation was not "doing business" in the state so as to render it subject to the tax on the property sold.

Really corporations organized for and actually engaged in such activities as handling large tracts of land owned by such corporations, leasing and selling parcels thereof, disposing of stumpage, seeing that their lessees under mining leases live up to their contracts, and distributing the proceeds of such activities among the stockholders, are "engaged in business" within the meaning of this subdivision. Von Baumbach v. Sargent Land Co., (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

"What is income? The flow of capital's service is its income. A disservice is a negative service. A flow of disservice or negative income is called 'outgo.'" U. S. v. Guggenheim Exploration Co., (S. D. N. Y. 1917) 238 Fed. 231, per Manton, J.

The advance in the value of property during a series of years can in no just sense be considered the gains, profits or income of any one particular year of the series, although the entire amount of the advance be at one time turned into money by a sale of the property. Gauley Mountain Coal Co. v. Hays, (C. C. A. 4th Cir. 1915) 230 Fed. 110, 144 C. C. A. 408.

So-called royalties received by the corporate owners of lands leased for long terms for the purpose of exploring it and mining and removing the merchantable iron therein, to persons who agreed to pay monthly a specified sum per ton for all ore mined and shipped the previous month, and to mine and ship a specified quantity of ore each year, and in default of this to pay for the minimum amount specified and take credit therefor, and apply such sums upon ore mined and shipped thereafter in excess of such minimum,—are income within the meaning of this subdivision. Von Baumbach v. Sargent Land Co., (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460, reversing (C. C. A. 8th Cir. 1914) 219 Fed. 31, 134 C. C. A. 649, which affirmed (D. C. Minn. 1913) 207 Fed. 423, followed in U. S. v. Biwabik Min. Co., (1918) 247 U. S. 116, 38 S. Ct. 462, 62 U. S. (L. ed.) —, reversing (C. C. A. 6th Cir. 1917) 242 Fed. 9, 154 C. C. A. 601.

Time of accrual of receipt of income.—This Act measures the tax by the income received within the year for which the assessment was levied, whether it accrued within that year or in some preceding year, while the Act was in effect; but it excludes all income that accrued prior to Jan. 1, 1909, although afterward received while the Act was in effect. Hays v. Gauley Mountain Coal Co., (1918) 247 U. S. 189, 38 S. Ct. 470, 62 U. S. (L. ed.) —.

Net income.—The fair market value as of Dec. 31, 1908, of the stumpage cut and converted by a lumber manufacturing corporation from lands acquired by it prior to the passage of this Act, should be deducted from gross receipts when computing the company's net taxable income for the years in which the timber was converted into money, although the increase in market value over original cost had not been entered on the company's books until after the passage of the statute. Doyle v. Mitchell Bros. Co., (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) —.

The entire proceeds of a mere conversion of capital assets acquired before and converted into money after the taking effect of the Act are not to be treated as income. "In order to determine whether there has been gain or loss, and the amount of the gain, if any, we must withdraw from the gross proceeds an amount sufficient to restore the capital

value that existed at the commencement of the period." *Doyle v. Mitchell Bros. Co.*, (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) —.

In computing gain from a sale of assets bought by a corporation, interest should not be added to the original purchase price in order to ascertain its cost. *Hays v. Ganley Mountain Coal Co.*, (1918) 247 U. S. 189, 38 S. Ct. 470, 62 U. S. (L. ed.) —.

1909 Supp., p. 829, sec. 38, cl. second.

Measurement of tax.—The provisions of the Act which prescribe the method to be pursued in ascertaining the amount to be paid show that the amount is measured by the corporation's income during the entire calendar year in which the taxed privilege was exercised, and not by its income while the privilege was being exercised if the corporation was not carrying on or doing business during the entire year. *Blalock v. Georgia Ry., etc., Co.*, (C. C. A. 5th Cir. 1915) 228 Fed. 296, 142 C. C. A. 588, Ann. Cas. 1917A 679.

Deductions.—*Interest on "bonded or other indebtedness."*—In *Altheimer, etc., Ins. Co. v. Allen*, (E. D. Mo. 1917) 246 Fed. 270, a corporation doing a brokerage business bought securities for its customers, and carried the same for them. On these purchases the customers paid the corporation only a part of the purchase price, and consequently owed it balances, on which they paid interest to it. The corporation in turn also paid on such purchases only a part of the purchase price, and accordingly owed balances on them on which it paid the interest; but the interest thus received by the corporation from its customers on said purchases exceeded the interest paid by the plaintiff on said purchases. It was held that the interest paid by the corporation on account of the purchases was to be treated as having been made "on its bonded and other indebtedness," and that the entire amount received as interest by the corporation was to be included as gross income.

"Expense of the business."—Where two civil engineers formed a corporation to conduct the business of civil engineering, and prior to the enactment of the Corporation Tax Act entered into an agreement with the corporation to devote their time and energies to the corporation for a stipulated salary, and providing also that the net surplus profits should be divided between them on a percentage basis, it was held that the net surplus profits so divided must be treated as income of the corporation subject to the tax and not as "compensation" or expenses of the business entitled to be deducted. *Jacobs v. Anderson*, (C. C. A. 2d Cir. 1915) 228 Fed. 505, 143 C. C. A. 87.

Expenditures for certain additions and betterments to railroad properties were not to be deducted except to the extent of the cost of such additions and betterments so far as they were mere renewals with like kind and quality, such cost only being chargeable to expenses of maintenance and operation. *Grand Rapids, etc., R. Co. v. Doyle*, (W. D. Mich. 1915) 245 Fed. 792.

Capital assets.—A corporation whose property consisted for the most part of timber, lands and a sawmill, and which was engaged in the lumber business, cutting and manufacturing its own timber into lumber and other forest products and selling and marketing the same, in computing its taxable net income was entitled to deduct from its gross receipts the then actual market value of the timber stumpage cut and converted into lumber during that year and also the actual market value of its stump and other lands sold during the year. *Mitchell Bros. Co. v. Doyle*, (W. D. Mich. 1915) 225 Fed. 437.

Where the evidence showed that the property of a coal mining corporation had depreciated to the amount of at least 15 cents per ton, it was held that the value of the coal mined did not represent income. If an owner has a ton of coal in the ground worth 15 cents, and he digs it up and sells it for 15 cents per ton, the amount so received for it is not income, but is, in fact, only a return to him of the value of his coal as part of his capital asset. *Forty Fort Coal Co. v. Kirkendall*, (M. D. Pa. 1915) 233 Fed. 704.

Moneys received for service connections and pipe extensions by a waterworks corporation are not permitted to be deducted from the gross amount of income. "Moneys so expended are invested in permanent improvements which tend to enhance the rental and the market value of the water system." Nor does it make any difference that the state commission had decided that meters and service connections paid for by consumers are not to be included in the valuation of the water company's plant upon which it is entitled to earn a fair return. *Union Hollywood Water Co. v. Carter*, (C. C. A. 9th Cir. 1917) 238 Fed. 329, 151 C. C. A. 345.

"Taxes imposed under authority of state."—Mississippi Code of 1906, § 4273, is construed by the Supreme Court of the state as imposing a tax not on a bank or its capital, but upon the shareholders, the bank being required to pay for them. Hence amounts paid by a bank under that statute were not for "taxes imposed" within the meaning of those words in the federal Corporation Tax Act. *Jackson First Nat. Bank v. McNeel*, (C. C. A. 5th Cir. 1917) 238 Fed. 559, 151 C. C. A. 495.

Reserve funds of insurance companies.—Amounts of unpaid losses which fire and marine insurance companies are required by the state insurance commissioner, un-

der the authority of Pa. Act June 1, 1911, P. L. 607, the schedule each year as items of liabilities are not "reserve funds" "required by law" within the meaning of this subdivision. *McCoach v. Insurance Co. of North America*, (1917) 244 U. S. 585, 37 S. Ct. 709, 61 U. S. (L. ed.) 1333.

Depreciation.—A mining corporation is not entitled to deduct from its gross income any amount whatever on account of depletion or exhaustion of ore bodies caused by its operations for the year for which the tax was assessed, nor is it entitled to a deduction against gross proceeds from the mining and treatment of ores to the extent of the cost value of the ore in the ground before it was mined, ascertained in strict compliance with the rules and regulations of the Treasury Department. *Goldfield Consol. Mines Co. v. Scott*, (1918) 247 U. S. 126, 38 S. Ct. 465, 62 U. S. (L. ed.) —.

The market value of ore in place on premises at the beginning of the tax period may not be deducted when ascertaining the net income of a corporation which had leased certain lands for the purpose of exploring for and mining and removing the merchantable iron ore therein, and had agreed to pay monthly a specified sum per ton for all ore mined and shipped the previous month, and to mine and ship a specified quantity of ore each year, and, in default of this, to pay for the minimum amount specified and take credit therefor, and apply such sums upon ore mined and shipped thereafter in excess of such amount. The lessee is in no sense a purchaser of ore in place. *U. S. v. Birvabik Min. Co.*, (1918) 247 U. S. 116, 38 S. Ct. 462, 62 U. S. (L. ed.) —, reversing (C. C. A. 6th Cir. 1917) 242 Fed. 9, 154 C. C. A. 601.

Exhaustion of the ore body resulting from the process of mining is not an element to be considered in determining reasonable "depreciation" under this subdivision. *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

1909 Supp., p. 832, sec. 38, cl. fourth.

"Real facts," and not "bookkeeping facts" determine the net income of a corporation. *Mitchell Bros. Co. v. Doyle*, (W. D. Mich. 1915) 225 Fed. 437; *U. S. v. Guggenheim Exploration Co.*, (S. D. N. Y. 1917) 238 Fed. 231; *Forty Fort Coal Co. v. Kirkendall*, (M. D. Pa. 1915) 233 Fed. 705.

1909 Supp., p. 832, sec. 38, cl. fifth.

Action to recover—*In general*.—"In the collection of the taxes imposed by the statute, the government is not confined to the summary proceedings therein provided,

but may resort to a plenary suit." *U. S. v. Grand Rapids, etc., R. Co.*, (W. D. Mich. 1915) 239 Fed. 153.

Limitation.—The three-year clause of this subdivision "is not a limitation upon the right of the government to sue for unpaid taxes, but, at most, is a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings." *U. S. v. Grand Rapids, etc., R. Co.*, (W. D. Mich. 1915) 239 Fed. 153.

Neither the limitation of time upon the action of the commissioner of internal revenue, nor any other statute of limitation, is binding upon the United States in bringing an action to recover the difference between the special excise tax levied, assessed and paid and the amount which it is alleged should have been levied, assessed and paid, where the corporation's return incorrectly stated its net return. *U. S. v. Minneapolis Threshing Mach. Co.*, (D. C. Minn. 1915) 229 Fed. 1019.

Assessment as condition precedent.—Where a tax of a fixed percentage, as here, is imposed by statute on a subject or object which is so definitely described in the statute that its amount or value, on which the fixed per centum is to be calculated, can be ascertained and determined, on evidence, by a court, a suit for the tax will lie, without an assessment. *U. S. v. Grand Rapids, etc., R. Co.*, (W. D. Mich. 1915) 239 Fed. 153, and numerous cases there cited.

Burden of proof.—In an action by the government to collect an excise tax on the amount received on the sale of stock in another corporation owned by the defendant, which the latter had carried on its books at the valuation of \$1, the burden was upon the plaintiff to show by a fair preponderance that the stock was worth but \$1. *U. S. v. Guggenheim Exploration Co.*, (S. D. N. Y. 1917) 238 Fed. 231.

1914 Supp., p. 185, sec. II.

Constitutionality.—The Income Tax Act of Oct. 3, 1913, is constitutional. The Sixteenth Amendment to the Constitution relieved all income taxes from the rule of apportionment. *Dodge v. Brady*, (1916) 240 U. S. 122, 36 S. Ct. 277, 60 U. S. (L. ed.) 560; *Stanton v. Baltic Min. Co.*, (1916) 240 U. S. 103, 36 S. Ct. 278, 60 U. S. (L. ed.) 546; *Tyee Realty Co. v. Anderson*, (1916) 240 U. S. 115, 36 S. Ct. 281, 60 U. S. (L. ed.) 554.

The Act is not unconstitutional for retroactivity as applied to returns made in 1914 which were estimated or based upon the income of an individual for a certain definite preceding period, even though that period be partially prior to the date of the enactment of the law. If the person is liable for the tax in the future, the method of its computation as

estimated upon the past does not invalidate the tax. *Edwards v. Keith*, (E. D. N. Y. 1915) 224 Fed. 585, *affirmed* (C. C. A. 2d Cir. 1916) 231 Fed. 110, 145 C. C. A. 298, L. R. A. 1918A 498.

1914 Supp., p. 185 A, subd. 1.

Income of one who died July 22, 1913, which accrued from March 1st was subject to tax in view of subdivision D of this Act, which makes it retroactive. *Brady v. Anderson*, (C. C. A. 2d Cir. 1917) 240 Fed. 665, 153 C. C. A. 463.

"Income from all property."—Income from corporate stocks and bonds owned by a nonresident alien and kept in this country by an agent, who collected such income for the owner, was taxable under this provision. *De Ganay v. Lederer*, (E. D. Pa. 1917) 239 Fed. 568.

The distributive share of a stockholder paid over to him after the effective date of the Act, upon the surrender of his entire interest in the corporation, as a single and final dividend in liquidation of the company's entire assets and business, is not income arising or accruing during the year, where such payment, although equaling twice the par value of his stock, represented only its intrinsic value at and before the effective date of the Act, the increase in value being due to a gradual rise in the market value of the company's lands, culminating before the Act took effect. *Lynch v. Turrish*, (1918) 247 U. S. 221, 38 S. Ct. 537, 62 U. S. (L. ed.) —, (*affirming* (C. C. A. 8th Cir. 1916) 236 Fed. 653, 149 C. C. A. 649) *distinguished* in *Lewellyn v. Gulf Oil Corp.*, (C. C. A. 3d Cir. 1917) 245 Fed. 1, 158 C. C. A. 1, *reversing* (W. D. Pa. 1916) 242 Fed. 709.

A stock dividend which represents surplus profits transferred to the corporation's capital account is capital and not income within the meaning of the Income Tax Law. *Towne v. Eisner*, (1918) 245 U. S. 418, 38 S. Ct. 158, 62 U. S. (L. ed.) —.

Alimony paid to a divorced wife under a decree of court is not subject to an income tax under this subdivision: *Gould v. Gould*, (1917) 245 U. S. 151, 38 S. Ct. 53, 62 U. S. (L. ed.) —.

Tax in respect of rent.—A clause in a lease whereby the lessee agrees to assume the payment of all taxes and assessments upon the "yearly payments herein agreed to be made by the party of the first part . . . for the payment or collection of which . . . the said party of the first part would otherwise be liable or accountable under any lawful authority whatever" is broad enough to cover the income tax, payable out of and assessed upon the "yearly payments agreed to be made." *North Pennsylvania R. Co. v. Philadelphia, etc., R. Co.*, (1915) 249 Pa. St.

326, 95 Atl. 100. See also *Suter v. Jordan Marsh Co.*, (1916) 225 Mass. 34, 113 N. E. 580.

Accrual of net income.—See *Edwards v. Keith*, (E. D. N. Y. 1915) 224 Fed. 585, (*affirmed* [C. C. A. 2d Cir. 1916] 231 Fed. 110), 145 C. C. A. 298, L. R. A. 1918A 498, (1913).

1914 Supp., p. 186 B.

Dividends declared and paid in the ordinary course of business by a corporation to its stockholders after the taking effect of the Act, whether from current earnings, or from accumulated surplus made up of past earnings or increase in value of corporate assets, notwithstanding it accrued to the corporation in whole or in part prior to March 1, 1913, were taxable "net income" under this subdivision. *Lynch v. Hornby*, (1918) 247 U. S. 221, 38 S. Ct. 537, 62 U. S. (L. ed.) —, *reversing* (C. C. A. 8th Cir. 1916) 236 Fed. 661, 149 C. C. A. 657. "Controlled by *Lynch v. Hornby*," last above cited was *Peabody v. Eisner*, (1918) 247 U. S. —, 38 S. Ct. 546, 62 U. S. (L. ed.) —, holding that a distribution in specie by a corporation to its stockholders after the effective date of the Income Tax Act, of the holdings of shares of stock in another corporation, which it owned on and prior to that date, was part of the stockholders' taxable income.

1914 Supp., p. 187 D.

Constitutionality.—The limited retroactivity, fixing a first period embracing only the time from March 1 to Dec. 31, 1913, is not repugnant to the due process clause of the Fifth Amendment nor inconsistent with the Sixteenth Amendment, since the date of retroactivity did not extend beyond the time when the amendment was operative, and there was power by virtue of the amendment during that period to levy the tax without apportionment. *Brushaber v. Union Pac. R. Co.*, (1915) 240 U. S. 1, 36 S. Ct. 235, 60 U. S. (L. ed.) 493, Ann. Cas. 1917B 713, L. R. A. 1917D 414.

Force of Treasury Department instructions.—See *Edwards v. Keith*, (C. C. A. 2d Cir. 1916) 231 Fed. 110, 145 C. C. A. 298, L. R. A. 1918A 498, *affirming* (E. D. N. Y. 1915) 224 Fed. 585.

1914 Supp., p. 189 E.

Tax in respect of rent.—Money deducted and withheld from the rent by a lessee in accordance with the requirements of the federal income tax is a tax or assessment upon or in respect of the rent payable under the lease. So where by the terms of a lease, the lessee obligated himself to pay "all taxes and assessments . . . upon or in respect of the rent . . . howsoever or to whomsoever assessed" it

was held that he could not justify a refusal to pay a part of the rent reserved in the lease, on the ground that he had been compelled to pay therefrom a sum exacted by the United States government. *Suter v. Jordan Marsh Co.*, (1916) 225 Mass. 34, 113 N. E. 580. See also *North Pennsylvania R. Co. v. Philadelphia, etc., R. Co.*, (1915) 249 Pa. St. 326, 95 Atl. 100.

1914 Supp., p. 191 G.

Doubt must be resolved against the government where the meaning and scope of language claimed to impose a tax is uncertain. *Scott v. Western Pac. R. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515.

Receivers of corporations are not taxable under this statute (*Scott v. Western Pac. R. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515, where one of the reasons for so concluding was that while this statute omits reference to receivers of corporations the Income Tax Law of Sept. 8, 1916, ch. 463, *ante*, this volume, title INTERNAL REVENUE, page 334, expressly provides for the inclusion of property held by such receivers.

The purpose was to exclude from consideration any income that accrued prior to March 1, 1913, especially as the Sixteenth Amendment was not adopted until February, 1913. *Southern Pac. Co. v. Lowe*, (1918) 247 U. S. 330, 38 S. Ct. 540, 62 U. S. (L. ed.) —, reversing (S. D. N. Y. 1917) 238 Fed. 847. *Compare* *Lewellyn v. Gulf Oil Corp.*, (C. C. A. 3d Cir. 1917) 245 Fed. 1, 158 C. C. A. 1, reversing (W. D. Pa. 1916) 242 Fed. 709.

Provision contrasted with section 38, Act of Aug. 5, 1901.—Under the Act of Oct. 3, 1913, as to a corporation, the tax is assessed and paid "upon the amount of net income accruing from business transacted and capital invested within the United States during such year," while under section 38 of the Act of Aug. 5, 1909 (1909 Supp. Appendix, p. 829), liability for the special excise tax depends upon whether the corporation was "engaged in business in any state or territory of the United States." In the one case we have "business transacted" within the United States and in the other we have "engaged in business" within the United States. *Laurentide Co. v. Durey*, (N. D. N. Y. 1916) 231 Fed. 223.

"The word 'income' as used in revenue legislation has a settled legal meaning. The courts have uniformly construed it to include only the receipt of actual cash as opposed to contemplated revenue due but unpaid, unless a contrary purpose is manifest from the language of the statute. . . . Doubtless it was the intention of Congress in legislation of this character to employ terms of sufficient comprehension to reach the actual income of the corporation by foreclosing any pos-

sible avenue of escape, but it can hardly be said that in so doing an intention prevailed to tax that which did not actually exist, except on paper, as income during the taxing period." *Maryland Casualty Co. v. U. S.*, (1917) 52 Ct. Cl. 201.

Accumulations accruing prior to Jan. 1, 1913, were capital, not income, for the purposes of the Act. *Southern Pac. Co. v. Lowe*, (1918) 247 U. S. 330, 38 S. Ct. 540, 62 U. S. (L. ed.) —.

"Transacting business."—For facts held sufficient to establish that a foreign corporation "transacted business" in the United States within the meaning of the statute so as to render it liable for the tax, see *Laurentide Co. v. Durey*, (N. D. N. Y. 1916) 231 Fed. 223.

Income derived from the business of shipping goods to foreign countries and there selling them is covered by this statute, which is constitutional in that regard. *Peck & Co. v. Lowe*, (1918) 247 U. S. 165, 38 S. Ct. 432, 62 U. S. (L. ed.) —.

Where the lessee of a railroad paid, in accordance with provisions in the lease, on stipulated dates in each year, to the persons holding shares of the lessor corporations stock and certified by it as then entitled to dividends, certain stipulated sums per share held, the amount so paid was income of the lessor corporation, and did not cease to be such because not paid directly to it. *West End St. R. Co. v. Malley*, (C. C. A. 1st Cir. 1917) 246 Fed. 625, 158 C. C. A. 581, following *Rensselaer v. Irwin*, (N. D. N. Y. 1917) 239 Fed. 739. To the same point under the Corporation Tax Act of Aug. 5, 1909, ch. 6, § 38, 1909 Supp. Appendix, p. 829, *Blalock v. Georgia R., etc., Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 387, 158 C. C. A. 451.

1916 Supp., p. 71, sec. 1.

"Manufacture of opium for smoking purposes" defined.—In *Seidler v. U. S.*, (C. C. A. 2d Cir. 1915) 228 Fed. 336, 142 C. C. A. 628, reversing a judgment of conviction, the court said: "We cannot agree that adding water to an extract of opium, which is itself smokable, is a manufacture of opium for smoking purposes."

The mere mixing of smoking opium with the residue of opium that has been smoked, and heating the same, is not a "manufacture of opium for smoking purposes" within the meaning of the statute. The manufacture which the statute contemplates is complete when from the crude opium there has been produced the smoking opium, with which alone, as defendant contended, he operated, in its unsmoked and smoked condition. *U. S. v. Shelley*, (1913) 229 U. S. 239, 33 S. Ct. 635, 67 U. S. (L. ed.) 1167; *Shelley v. U. S.*, (C. C. A. 2d Cir. 1912) 198 Fed. 88, 117 C. C. A. 294.

An alien Chinese person, so proved to be on the trial, could not lawfully be convicted on an indictment not charging him with manufacturing opium while an alien, but charging a failure to give the bond required of manufacturers of opium for smoking purposes, and, while so failing, engaging in the business of manufacturing opium for smoking purposes. *Lee Mow Lin v. U. S.*, (C. C. A. 8th Cir. 1917) 240 Fed. 408, 153 C. C. A. 334.

1916 Supp., p. 71, sec. 2.

Evidence.—In a prosecution for a violation of the statute forbidding the manufacture of smoking opium without having filed a bond, it is a relevant circumstance and competent to show, that a man in whose possession appropriate materials and utensils are found is himself a smoker, and therefore under a temptation to supply himself with smoking opium. *Tam Shi Yan v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 422, 140 C. C. A. 116.

Review on appeal.—An assignment of error, asserting that a verdict of conviction was against the weight of evidence, raises no question for review in the Circuit court of Appeals. *Tam Shi Yan v. U. S.*, (C. C. A. 2d Cir. 1915) 224 Fed. 422, 140 C. C. A. 116.

1916 Supp., p. 73, sec. 1. [*Act of Aug. 18, 1914.*]

Effect on state legislation.—This Act "has not application and makes no reference to maintaining and operating places for the purpose of carrying on and engaging in the business of dealing in futures on margin," and therefore does not invalidate Georgia Code of 1910, § 4257. *Arthur v. State*, (1917) 146 Ga. 827, 92 S. E. 637.

1916 Supp., p. 85, sec. 3, par. first.

Constitutionality of tax.—The tax imposed by this section is upon a franchise to conduct the business of banking and clearly lawful. *Anderson v. Farmers' Loan, etc., Co.*, (C. C. A. 2d Cir. 1917) 241 Fed. 322, 154 C. C. A. 202.

Capital, etc., "employed" in banking.—In *Anderson v. Farmers' Loan, etc., Co.*, (C. C. A. 2d Cir. 1917) 241 Fed. 322, 154 C. C. A. 202, where a trust company did a large trust business and also a large banking business, it was held that certain invested assets were not capital, surplus, and undivided profits not employed in banking, but were employed in all the business of the bank of every kind, and that it was a question of fact, to be determined at a trial, just how far the so-called permanent investments were em-

ployed in banking, and that the fact was not to be determined by methods of book-keeping, but by real transactions.

1916 Supp., p. 89, sec. 5.

Taxing measure.—In the case of *In re Capitol Trading Co.*, (N. D. N. Y. 1916) 229 Fed. 806, the court said: "Emergency Revenue Law, Oct. 22, 1914, ch. 331, 38 Stat. 745, extended for one year to December 31, 1916, is a taxing measure or law."

Constitutionality.—The Act has been construed to impose a stamp tax on a deed given by a referee in pursuance of an order of a state court in foreclosure proceedings and to be not unconstitutional for that reason. *Home Title Ins. Co. v. Keith*, (E. D. N. Y. 1916) 230 Fed. 905.

1916 Supp., p. 89, sec. 6.

Attachment of stamp at what time.—This section imposes the penalty upon any one who makes, signs, or issues (that is, uses or delivers) the deed. But this does not mean that the stamp must be attached to the paper before the paper can be signed at all. It simply places upon each of these individuals the responsibility of being charged with a misdemeanor if the paper is not duly stamped before its actual issuance or use, and of course the lack of the stamp must be rectified before recording. The "or" is disjunctive as to persons but conjunctive as to a complete act of making, signing, and using. *Home Title Ins. Co. v. Keith*, (E. D. N. Y. 1916) 230 Fed. 905.

1916 Supp., p. 96. [*Sale, agreement of sale, etc.*]

Tax on "offers."—The total price at which each seller agrees to sell must be the basis upon which the tax on "offers" is computed, and not merely the amount received by the broker for negotiating the deal. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

Failure to reduce agreements to writing and attach the stamp cannot relieve from the tax. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

An agreement once subject to the tax cannot later be relieved of that burden by any action of the parties. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

1916 Supp., p. 98. [*Conveyance.*]

Deed by master in chancery.—This language is amply broad enough to cover master's deeds, or in fact any deed to land made pursuant to an order of court by an officer duly authorized, unless there

is some reason inherent in the office of a special master in chancery or other court officer empowered to make the sale and sign the conveyance, which prevents the operation of the Act. *Crawford v. New South Farm, etc., Co.*, (S. D. Fla. 1915) 231 Fed. 999.

Deed by referee in foreclosure sale.—A person purchasing property at a mortgage foreclosure sale is liable for a stamp tax by virtue of the deed executed by the referee at the sale, for a person buying at a judicial sale is a party for whose use or benefit the instrument is issued. *Home Title Ins. Co. v. Keith*, (E. D. N. Y. 1916) 230 Fed. 905.

1916 Supp., p. 99. [Power of attorney.]

Power of attorney in bankruptcy proceeding.—In *In re Capitol Trading Co.*, (N. D. N. Y. 1916) 229 Fed. 806, the court said: "I see no room for excepting from the operation of this act powers or letters of attorney authorizing attorneys in fact to act for their principal in suits at law or in bankruptcy proceedings. . . . Such a paper is not exempt from the stamp duty or stamp tax when executed and presented, even if its execution and presentation is not required by law. This proposition is covered by the decision of Judge Hand (*In re Hawley*, [S. D. N. Y. 1915] 220 Fed. 372)."

1916 Supp., p. 100, sec. 23.

Relief from the penalty provided by this section is not afforded by reason of the provision in section 22 of the same Act which makes default, when accompanied by criminal intent, a misdemeanor. *Kohlhamer v. Smietanka*, (N. D. Ill. 1917) 239 Fed. 408.

1916 Supp., p. 101, sec. 1.

Revenue measure.—This Act is a revenue Act. While it may be assumed that the statute has a moral end as well as revenue in view, the ends are to be considered as reached only within the limits of a revenue measure. *U. S. v. Jin Fuey Moy*, (1916) 241 U. S. 394, 36 S. Ct. 658, 60 U. S. (L. ed.) 1061, Ann. Cas. 1917D 854, *affirming* (W. D. Pa. 1915) 225 Fed. 1003.

"It cannot now be questioned in any lower court that the Harrison Act is a revenue measure or tax law and is to be construed as such. *U. S. v. Jin Fuey Moy*, 241 U. S. 394, 39 S. Ct. 658, 60 U. S. (L. ed.) 1061, a decision which deprives of authority the judgment of this court in *Wilson v. U. S.*, 229 Fed. 344, 143 C. C. A. 464." *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

"The word 'derivative' is to be taken in its commonly received or popular sense,

as distinguished from special or scientific usage. *Farbenfabriken v. U. S.*, 102 Fed. 603, 42 C. C. A. 525, and cases cited. . . . Even if it were possible chemically to extract from coca leaves the component parts of novocaine, the latter substance could not be called a derivative of coca leaves; it is a derivative of coal tar." *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

An indictment of a physician charging him with giving a prescription for and so dispensing pounds of opium, charged no offense, because the word "dispense" as used in the statute "relates to actual delivery of the drug by the physician to the patient, from the former's office supply, generally, though not excluding other delivery." *U. S. v. Reynolds*, (D. C. Mont. 1916) 244 Fed. 991, sustaining a demurrer.

An indictment for unlawful dealing, etc., in cocaine, morphine sulphate, and morphine was demurrable for failure to allege that either of said drugs was opium or coca leaves, since the court could not take judicial cognizance of the fact. *U. S. v. Hammers*, (S. D. Fla. 1917) 241 Fed. 542.

1916 Supp., p. 102, sec. 2.

Clause (a) is unconstitutional as in violation of the 10th Amendment to the federal Constitution so far as it makes criminal a sale, etc., by a registered physician of a prohibited drug, without a "written order," etc., and not "in the course of his professional practice," since said omissions are merely violations of local police regulations, which Congress had no power to establish, and are not means to effect the objects of the Act in respect of its revenue. *U. S. v. Doremus*, (W. D. Tex. 1918) 246 Fed. 958.

Conspiracy to violate the statute.—See notes to section 37 in title PENAL LAWS, *infra*.

A physician or other person duly registered may be guilty of violating the Act. *Thurston v. U. S.*, (C. C. A. 5th Cir. 1917) 241 Fed. 335, 154 C. C. A. 215.

Prescription containing unreasonable quantity of narcotic drug.—In *U. S. v. Curtis*, (N. D. N. Y. 1916) 229 Fed. 288, it was held to be a violation of the Harrison Act for a registered physician to issue a prescription for an unreasonable quantity of narcotic drugs and for a dealer to fill such prescription.

Indictment—Negating exceptions in section 2(a).—An indictment charging duly registered physicians who had paid the tax assessed by the statute with dispensing and distributing, without keeping a record, etc., was demurrable for failure to negative that the physician personally attended upon the person to whom the drug was dispensed or distributed. *U. S. v. Hammers*, (S. D. Fla. 1917) 241 Fed. 542.

Failure to preserve duplicate of order.

—A demurrer on the ground that the offense was not alleged of a day certain was overruled to an indictment presented Oct. 26, 1916, which alleged that the defendant on May 13, 1916, gave an order for opium which "was thereafter accepted" and "after the acceptance" he failed to preserve a duplicate thereof "in such a way as to be readily accessible," contrary to law, the court saying: "The offense would be committed when ready accessibility first failed after the order's acceptance and is capable of continuity." *U. S. v. Gaag*, (D. C. Mont. 1916) 237 Fed. 728.

1916 Supp., p. 105, sec. 4.

Persons exempted.—A person who has not registered and paid the special tax as required by section 1 of this Act cannot claim the exemption under the proviso of this section. *U. S. v. Johnson*, (W. D. Tenn. 1915) 228 Fed. 251.

1916 Supp., p. 106, sec. 6.

Large and unusual quantities of opium sold, distributed, given away or dispensed, unaccompanied by explanation as to the necessity therefor, are sales and a dispensing of the drug for the very purpose of evading the intentions and provisions of the Act and therefore unlawful. *U. S. v. Curtis*, (N. D. N. Y. 1916) 229 Fed. 288.

The words "or other preparations" mean other preparations ejusdem generis with liniments and ointments. *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

1916 Supp., p. 106, sec. 8.

"Any person not registered."—In *Wilson v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 344, 143 C. C. A. 464, the plaintiff in error was convicted of a violation of this section; there having been found in his possession a substantial quantity of opium. He admitted that he kept it solely for the purpose of smoking it. He did not produce opium, nor import, nor manufacture, nor compound, nor deal in it. Nor did he dispense it, nor sell, distribute or give it away. Upon writ of error to review the judgment, the defendant contended that he was not within the provisions of this section because the

words "any person" as used therein are to be construed as referring only to persons of the classes referred to in section 1 as being obliged to register and pay a tax. But the judgment of conviction was affirmed.

Possession of drugs by certain persons is made unlawful by this section, with some exemptions; the section "does not merely provide a presumption or a rule of evidence to establish a violation of section 1." *U. S. v. O'Hara*, (D. C. R. I. 1916) 242 Fed. 749.

Indictment—Alleging possession.—An indictment charging that the defendant did "unlawfully, wrongfully, and knowingly sell, dispense, and distribute . . . morphine sulphate tablets," and that he sold and dispensed the same as a dealer to consumer, etc., is equivalent to charging that he had the drugs in his possession. *U. S. v. Curtis*, (N. D. N. Y. 1916) 229 Fed. 288.

But it has been held that a mere allegation that the defendant, not having registered, etc., had the prohibited drug in his possession, or an equivalent count, is not sufficient to charge a violation of the provisions of the Act. *U. S. v. Carney*, (N. D. Ia. 1915) 228 Fed. 163.

But compare *U. S. v. Brown*, (W. D. Wash. 1915) 224 Fed. 135, wherein a contrary conclusion was reached. In that case the view was taken that opium is an "outlaw" in this country and that the Act is therefore intended to prohibit importation of the drug for any purpose.

Negating innocent possession.—An indictment charging that defendants were persons mentioned in section 1 and unlawfully, willfully, knowingly, and feloniously had in their possession and under their control certain or such drugs, was sufficient without alleging that such possession was for the purpose of dealing, etc.,—conceding that a dealer may have an innocent possession of drugs which is not connected with his dealing, for example, as medicine for his personal ailments. *U. S. v. O'Hara*, (D. C. R. I. 1916) 242 Fed. 749.

1916 Supp., p. 108, sec. 9.

"The rule of strict construction applies to criminal statutes such as this." *U. S. v. Doremus*, (W. D. Tex. 1918) 246 Fed. 958.

INTERSTATE COMMERCE

Vol. III, p. 809, sec. 1.

Commerce as interstate or intrastate—In general.—It is well settled that the intention of the shipper as to the ultimate destination at the time the freight starts

is the test of its character, regardless of whether the voyage is temporarily broken, whether more than one carrier transports it or whether it moves on through or local

bills of lading. *U. S. v. Illinois Cent. R. Co.*, (E. D. La. 1916) 230 Fed. 940.

Booking performance for theatrical circuit.—In *Marienelli v. United Booking Offices*, (S. D. N. Y. 1914) 227 Fed. 165, it was held that booking performances for a theatrical circuit, which requires them to pass from state to state, taking with them paraphernalia and stage properties, constitutes interstate commerce.

The leasing of property, as of machinery to be used by manufacturers, may be interstate commerce.

Validity of state statutes—*In general*.—So far as this Act manifests a purpose to regulate the field over which Congress has paramount authority, the right of the state to exercise its police power in the same field ceases to exist, no matter whether the particular act of Congress covers it entirely or not. *Western Union Tel. Co. v. Foster*, (1916) 224 Mass. 192, 113 N. E. 192.

Demurrage.—Demurrage charges are not within the jurisdiction of state authorities. *Chicago, etc., R. Co. v. Rock County Sugar Co.*, (1916) 162 Wis. 374, 382, 156 N. W. 607, 610.

Furnishing cars.—The validity of a state statute requiring a carrier to furnish suitable cars, upon reasonable notice, and to make transportation with "reasonable dispatch" is not affected by the federal statute, since such state regulation amounts to no more than a declaration of pre-existing law. *Carr v. Chicago, etc., R. Co.*, (1916) 173 Ia. 444, 155 N. W. 840.

Vol. III, p. 816, sec. 3.

Preference between localities.—The power of Congress and of the Interstate Commerce Commission to prevent interstate carriers from practicing discrimination against a particular locality is not confined to those whose rails enter it. "Localities require protection as much from combination of connecting carriers as from single carriers whose rails reach them." *St. Louis, etc., R. Co. v. U. S.*, (1917) 245 U. S. 136, 38 S. Ct. 49, 62 U. S. (L. ed.) —, *affirming* (W. D. Ky. 1916) 234 Fed. 668.

Switching facilities and service—*In general*.—A joint switching operation between two railroads over terminals used, managed and in large part owned in common, is not essentially a reciprocal switching arrangement constituting a facility for the interchange of traffic between the lines of the railroads interested, within the meaning of this section. *Louisville, etc., R. Co. v. U. S.*, (1916) 242 U. S. 60, 37 S. Ct. 61, *reversing* (M. D. Tenn. 1915) 227 Fed. 258.

Limitation of action.—In an action for unlawful discrimination in the matter of switch connections, the right of action does not begin with the demand; the offense is complete with the refusal of the

demand when the statute of limitations begins to run. *Langhill v. Pennsylvania R. Co.*, (1916) 254 Pa. St. 119, 98 Atl. 873.

Construction of private siding.—**Lien for cost.**—Where an interstate railroad company constructs for a shipper, upon credit, a commercial siding upon the latter's land and recovers a judgment against him for the unpaid cost thereof, such judgment is not entitled to priority in lien or distribution of proceeds of a foreclosure sale to mortgages given and duly recorded long before the siding was constructed. *New York Guaranty Trust Co. v. Newark Meadows Imp. Co.*, (1915) 84 N. J. Eq. 495, 94 Atl. 589.

Vol. III, p. 833, sec. 8.

Damages for overcharge.—All the damages that properly can be attributed to a carrier's overcharge, whether it be the keeping of the shipper out of its money, or the damage to its business following as a remoter result of the same cause, must be deemed to have been included in an award by the Interstate Commerce Commission of a sum of money to a shipper as reparation for unreasonable rates, pursuant to the provisions of sections 8, 9, 13, which contemplate the recovery of all damages sustained through violations of the Act, either before the commission or in the courts, requiring, however, an election between the two methods of procedure; and a satisfaction of the commission's award precludes any recovery in a subsequent action in a state court for any damages arising out of such overcharge. *Louisville, etc., R. Co. v. Ohio Valley Tie Co.*, (1916) 242 U. S. 298, 37 S. Ct. 120, 61 U. S. (L. ed.) 305, *reversing* (1914) 161 Ky. 212, 170 S. W. 633.

Vol. III, p. 833, sec. 9.

Exclusiveness of remedies.—This section and the preceding section 8 do not completely express the will of Congress as respects the injuries for which redress may be had under the Act, or the modes in which it may be obtained, for section 22 contains this important provision: "Nothing in the act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies." The three sections, if broadly construed, are not altogether harmonious, and yet it evidently is intended that all shall be operative. Only by reading them together and in connection with the Act as a whole can the real purpose of each be seen. They often have been considered and what they mean has become pretty well settled, and it is clear that the modes of redress provided are not exclusive. *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916)

242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746.

Preliminary investigation by commission—In general.—This section deals with the redress of injuries resulting from violations of the Act and, generally speaking, gives the person injured a right either to make complaint to the Interstate Commerce Commission or to bring an action for damages in a federal court, but not to do both. *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746.

Excess payments for shipments.—Jurisdiction of a suit by a shipper to recover amounts paid for shipments over an interstate route between two points, both within the state, in excess of what would have been payable under the state law if the shipments had been made over an intrastate route, may not be assumed in advance of a determination by the Interstate Commerce Commission of the administrative question as to the reasonableness of the carrier's practice, because of the grades of the two lines, in routing west-bound shipments over the longer interstate route, and east-bound shipments over the shorter intrastate route. *Northern Pac. R. Co. v. Solum*, (1918) 247 U. S. —, 38 S. Ct. 550, 62 U. S. (L. ed.) —.

Unequal distribution of cars.—Claims for damages arising out of the application, in interstate commerce, of rules for distributing cars in times of shortage, call for the administrative authority of the Interstate Commerce Commission as a condition precedent to action in the courts for damages where the rule is assailed as unjustly discriminatory. But where the assault is not against the rule, but against its unequal and discriminatory application, no administrative question is presented and the claim may be prosecuted in either a federal or a state court without any precedent action by the commission. *Morrisdale Coal Co. v. Pennsylvania R. Co.*, (1913) 230 U. S. 304, 33 S. Ct. 938, 57 U. S. (L. ed.) 1494, *affirming* (C. C. A. 3d Cir. 1910) 183 Fed. 929, 106 C. C. A. 269; *Pennsylvania R. Co. v. Puritan Coal Min. Co.*, (1915) 237 U. S. 121, 35 S. Ct. 484, 59 U. S. (L. ed.) 867, *affirming* (1912) 237 Pa. St. 420, 85 Atl. 426, Ann. Cas. 1914B 37; *Illinois Cent. R. Co. v. Mulberry Hill Coal Co.*, (1915) 238 U. S. 276, 35 S. Ct. 760, 59 U. S. (L. ed.) 1306, *affirming* (1912) 257 Ill. 80, 100 N. E. 151; *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746.

Jurisdiction of state courts—In general.—The Interstate Commerce Act does

not deprive the state courts of their common-law jurisdiction. *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746; *Louisville, etc., R. Co. v. Ohio Val. Tie Co.*, (1914) 161 Ky. 212, 170 S. W. 633.

In determining the question of the jurisdiction of federal and state courts, the distinction to be observed is that, in actions brought for violation or enforcement of the provisions of the federal statutes relating to interstate commerce, the federal courts and the Interstate Commerce Commission have exclusive jurisdiction, but actions at law brought independently of the federal statutes for some wrong done, where the federal statutes come incidentally into operation by reason of some regulatory provision contained therein, are cognizable by the state tribunals. *Kells Mill, etc., Co. v. Pennsylvania R. Co.*, (1916) 89 N. J. L. 490, 98 Atl. 309.

It appears to be regarded as a settled principle of construction in connection with the Interstate Commerce Act that in actions involving unjust discrimination where an administrative rule is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the authority of the Interstate Commerce Commission; but if the action is based upon a violation or discriminatory enforcement of the carrier's own rule, no administrative question is involved and such an action, although brought against an interstate carrier for damages arising in interstate commerce, may be prosecuted either in the state or federal courts. *Langhill v. Pennsylvania R. Co.*, (1916) 254 Pa. St. 119, 98 Atl. 873.

Failure to furnish cars.—A state court has jurisdiction without previous action by the Interstate Commerce Commission of a suit by a coal mining company against an interstate carrier to recover the damages arising in interstate commerce out of the latter's failure to furnish such company with the number of coal cars to which it claims to be entitled under the carrier's own rule for car distribution, since, the rule itself not being attacked, there was no administrative question involved. *Pennsylvania R. Co. v. Stineman Coal Min. Co.*, (1916) 242 U. S. 298, 37 S. Ct. 118, 61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

The carrier's defense at the trial of a suit brought by a shipper to recover the damages arising in interstate commerce out of the carrier's failure to furnish such shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, that the rule invoked by the shipper was discriminatory, and therefore not an appropriate test of the shipper's right or the carrier's duty, did not oust the state court of

jurisdiction, where the administrative question thus presented was not then an open one, such rule having theretofore been found by the Interstate Commerce Commission, upon complaint of other shippers, to be unjustly discriminatory. *Pennsylvania R. Co. v. Stineman Coal Min. Co.*, (1916) 242 U. S. 298, 37 S. Ct. 118, 61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

No recovery may be had in a suit brought in a state court by a shipper to recover damages arising in interstate commerce out of the carrier's failure to furnish a shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, where, before the trial, though after the period covered by the suit, the Interstate Commerce Commission, upon complaint of other shippers and after a full hearing, had found that such rule was unjustly discriminatory, and had directed the carrier to give no further effect to it, and, recognizing that shippers who had been injured through its operation in the past were entitled to reparation, had proceeded to award reparation to such shippers as appeared and adequately proved their injury and the amount of damages sustained, the commission's report making it plain that the finding was not based upon any temporary condition, but upon what inhered in the rule, and therefore was true from the time of its adoption. *Pennsylvania R. Co. v. Stineman Coal Min. Co.*, (1916) 242 U. S. 298, 37 S. Ct. 118, 61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

Limitation of actions.—To the same effect as the original note see *Altantic Coast Line R. Co. v. Virginia Mfg. Co.*, (1916) 119 Va. 5, 89 S. E. 103.

Set-off.—A shipper, having a money demand against an interstate carrier for damages, cannot offset the amount of a freight bill which he owes the carrier upon a shipment of merchandise. *Illinois Cent., etc., R. Co. v. Hooper*, (S. D. Ia. 1916) 233 Fed. 135; *Chicago, etc., R. Co. v. am S. Stein Co.*, (D. C. Neb. 1915) 233 Fed. 716.

Vol. III, p. 838, sec. 12.

Scope of examination.—The Interstate Commerce Commission may inquire into an attempt by interstate carriers to influence legislation or mold public opinion when such inquiry is incidental to the amount of expenditures and the manner of their charge on the books of the carriers, in an investigation instituted by it in pursuance of a resolution of the United States Senate, directing it to make an investigation as to supposed political activities and efforts to suppress competition on the part of such carriers. *Smith v. Interstate Commerce Commission*, (1917) 245 U. S. 33, 47, 38 S. Ct. 30, 62

U. S. (L. ed.) —; *Jones v. Interstate Commerce Commission*, (1917) 245 U. S. 48, 38 S. Ct. 34, 62 U. S. (L. ed.) —.

Mandamus to compel commission to act.—Error on the part of the Interstate Commerce Commission in declaring that a cause is not within its jurisdiction may be corrected by the courts on petition for mandamus, where such erroneous decision cannot be reviewed on appeal or writ of error. *U. S. v. Interstate Commerce Commission*, (1918) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) —, *reversing* (1914) 42 App. Cas. (D. C.) 514.

Vol. III, p. 844, sec. 16.

What orders will be enforced — reparation order.—In *Southern Pac. R. Co. v. Darnell-Taenzer Co.*, (1918) 245 U. S. 531, 38 S. Ct. 531, 62 U. S. (L. ed.) —, the issues and decision reached as stated by the court were as follows: "This is a suit brought by the defendants in error to recover reparation from the railroads for charging a rate on hardwood lumber, alleged to be excessive. The Interstate Commerce Commission had found the rate to be excessive and had made an order for reduction from 85 to 75 cents, which was obeyed, and also one for reparation to the extent of the excess, which was not obeyed. 13 Inters. Com. Rep. 668. A demurrer to the declaration was sustained by the circuit court on the ground that it was not alleged that the plaintiffs had paid the excessive rates or that they were damaged thereby. 190 Fed. 659. The declaration was amended, but at the trial the judge directed a verdict for the defendants, presumably on the ground argued here, that it did not appear that the plaintiffs were damaged. The judgment was reversed by the circuit court of appeals. 137 C. C. A. 460, 221 Fed. 890. At a new trial the jury were instructed that if they found the rate charged unreasonable and that prescribed by the Interstate Commerce Commission reasonable, they should find for the plaintiffs in accordance with the Commission's award. The jury found for the plaintiffs and this judgment was affirmed by the circuit court of appeals. 143 C. C. A. 663, 229 Fed. 1022.

"The only question before us is that at which we have hinted: whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The answer is not difficult. The general tendency of the law, in regard to damages, at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant, so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs

suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law, and it does not inquire into later events. . . .

"An objection is taken to the jurisdiction of this court upon writ of error. An application is made for a certiorari in case the objection is held good, and as we should grant the latter writ in that event, the question has no importance here except as a precedent. We are inclined to take the course followed sub silentio in *Mills v. Lehigh Valley R. Co.*, and to treat cases brought under § 16 of the Act to Regulate Commerce, which authorizes the joinder of all plaintiffs and all defendants, as standing on a peculiar ground."

Vol. III, p. 851, sec. 22.

Reservation of existing remedies—*In general.*—The clause in this section reserving existing common-law or statutory remedies cannot be construed as continuing in shippers a common-law right, the continued existence of which would be absolutely inconsistent with the provisions of this Act. In other words, the Act cannot be held to destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the Act, and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the Act should be regarded as cumulative, when other appropriate common-law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the Act. *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746.

Failure to furnish cars.—The proviso to this section permits a state court to take jurisdiction of an action for damages based on a rule of a carrier which though fair on its face has been unequally applied to the plaintiff's damage, as where the carrier violates a rule to furnish cars to shippers on an equal pro rata basis. So the state court may take jurisdiction if the action for damages is based on a breach of common-law duty of the carrier to furnish cars. *Pennsylvania R. Co. v. Puritan Coal Min. Co.*, (1915) 237 U. S. 121, 35 S. Ct. 484, 59 U. S. (L. ed.) 867, *affirming* (1912) 237 Pa. St. 420, 85 Atl. 426, Ann. Cas. 1914B 37; *Eastern R. Co. of New Mexico v. Littlefield*, (1915) 237 U. S. 140, 35 S. Ct. 489, 59 U. S. (L. ed.) 878; *Sonman Shaft Coal Co. v. Pennsylvania R. Co.*, (1913) 241 Pa. St. 487, 88 Atl. 746, *affirmed* (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188.

Recovery of overcharges.—A common-law action may be maintained in a state

court by a shipper against an interstate carrier to recover overcharges, where the tariffs which should be controlling have been duly published and filed and there is no question of the reasonableness of the rates. *Wolverine Brass Work v. Southern Pac. Co.*, (1915) 187 Mich. 393, 153 N. W. 778.

Suits by interstate carriers may be instituted in state courts to recover the difference between the lawful charge for service as shown by published tariffs under the Commerce Act and the amount actually paid for such service. *Cleveland, etc., R. Co. v. Talge Mahogany Co.*, (Ind. 1916) 112 N. E. 890; *Coad v. Chicago, etc., R. Co.*, (1915) 171 Ia. 747, 154 N. W. 396.

Repairing cars.—In *Rock Milling, etc., Co. v. Atchison, etc., R. Co.*, (1916) 158 Pac. 859, 98 Kan. 478, following the principle laid down in *Pennsylvania R. Co. v. Puritan Coal Min. Co.*, (1915) 237 U. S. 121, 35 S. Ct. 484, 59 U. S. (L. ed.) 867, it was held that a state court has jurisdiction in actions to recover the amounts due shippers of interstate freight, for repairing cars to put them in condition for holding the shipment, where the maximum charge for such repairs is fixed by the tariff on file with the Interstate Commerce Commission.

Failure safely to transport and deliver property.—A common-law action for damages may be sustained by the shipper against the carrier in certain instances for damages sustained in an interstate shipment of property. *Toledo, etc., R. Co. v. Milner*, (1915) 62 Ind. App. 208, 110 N. E. 756.

Attorney's fee.—Where an attorney's fee is allowed by the District Court for services rendered in that court, such fee does not cover services to be rendered in appellate proceedings. Upon finally prevailing in the Circuit Court of Appeals and the Supreme Court, the District Court has the power to allow a reasonable fee for services rendered in those courts. *Mills v. Lehigh Val. R. Co.*, (E. D. Pa. 1915) 226 Fed. 812.

The allowance of an attorney's fee for services before the Interstate Commerce Commission was held to be error, in *Meeker v. Lehigh Val., etc., Co.*, (1915) 236 U. S. 412, 35 S. Ct. 328, 59 U. S. (L. ed.) 644, Ann. Cas. 1916B 691, and in *Mills v. Lehigh Val. R. Co.*, (1915) 238 U. S. 473, 35 S. Ct. 888, 59 U. S. (L. ed.) 1414. See also *Mills v. Lehigh Val. R. Co.*, (E. D. Pa. 1915) 226 Fed. 812.

Vol. X, p. 171, sec. 1.

Nature and purpose.—"The statute evidently aims to prohibit, not only discrimination as between shippers, but departure from tariff rates, irrespective of its actual discriminatory effect." *Vandalia*

R. Co. v. U. S., (C. C. A. 7th Cir. 1915) 226 Fed. 713, 141 C. C. A. 469.

This statute is not necessarily limited only to relations, agencies or employment or of delegated authority between carriers and others, individual or corporate, which have a formal or express contractual basis. The statute directs that, in construing and enforcing its provisions, the act, omission or failure of any officer, agent or other person acting for or employed by any common carrier or shipper, acting within the scope of his employment, shall be deemed to be the act of such common carrier as well as of the person. This may have the effect of defining the limitations of imputed responsibility. That is to say, the law does not contemplate that such responsibility arises always from the mere fact of any agency, no matter what its scope may be. For example, if a locomotive engineer or conductor should pay to a shipper a refund in respect of a shipment, the law might not impute his act to the corporation, as it would if the payment were made by a traffic manager or a freight solicitor. But under the law, averment and proof would be permissible to show that he in fact acted for his carrier principal. It is clear that certain agents or employees of a carrier have duties within whose scope the payment of rebates, if lawful, would naturally fall. The section intends that the acts of such agents, when done, shall, as matter of law, be deemed to be the act of the carrier, and to dispense with further proof. But the Act does not and cannot intend that instances where the relation was constituted for no other purpose and with no wider scope than the commission of the particular act complained of should be beyond reach. In such cases, naturally, the indictment must contain either the appropriate general averment, or facts from which the inference may be drawn. *U. S. v. Cleveland, etc., R. Co.*, (N. D. Ill. 1915) 234 Fed. 178.

Venue.—By the amendment of 1906 the Act to regulate commerce was strengthened by the provisions making it unlawful for any carrier which has not filed its rates to transport passengers or property in interstate commerce, and by addition of the penalty of imprisonment for individuals. Only by virtue of the present enactment can a prosecution against a carrier for transporting goods without first having filed its schedule of rates be maintained. Heretofore the Act made failure to file rates with the commission at Washington an offense, but did not provide that transportation without filing rates should also be an offense. Under the old law, therefore, it was decided that the prosecution for failure to file could be brought only in the District of Columbia, where the office of the commission is situated. By the amendment,

however, the prosecution for transportation when rates have not been filed may be brought in any district through which the transportation passes. *New York Cent., etc., R. Co. v. U. S.*, (C. C. A. 2d Cir. 1908) 166 Fed. 267, 92 C. C. A. 331; *U. S. v. Illinois Terminal R. Co.*, (S. D. Ill. 1909) 168 Fed. 546. See also *U. S. v. Lombardo*, (W. D. Wash. 1915) 228 Fed. 980.

Indictment—In general.—An indictment under this section is to be construed *fortius contra proferentem*. The language must necessarily import the offense charged, and, if susceptible of a different interpretation, it is bad. Every fact necessary to constitute the crime must be directly and positively alleged, and nothing can be charged by implication or intendment. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 232 Fed. 953.

Rebating by devise.—An allegation in an indictment, which charged the payment of a refund, which was a rebate on freights, where it appeared that the payment was made to the shipper by a corporation which held a majority of the stock of the two carriers, when coupled with the further allegation that such payment was knowingly made by these carriers as a rebate, was a sufficient allegation of rebating by a devise. And such allegation involved and necessarily presented, among others, the question of fact whether the corporation making the payment was acting for the two carriers. *U. S. v. Cleveland, etc., R. Co.*, (N. D. Ill. 1915) 234 Fed. 178.

Unlawful extension of privileges.—An indictment attempting to charge an unlawful extension of privileges not specified in the tariffs filed which fails to allege that tariffs were filed; what special privileges or facilities were given; what the special arrangement as to rates consisted of; what connection such arrangement had with transportation in interstate commerce, or the time when the practices were alleged to be carried on, is void for uncertainty and particularity. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 232 Fed. 946.

Questions for jury.—On the trial of indictments against a railroad company for granting concessions to a shipper in respect to interstate shipments in violation of this section and for failing to observe its published tariff rates with regard to demurrage charges, the questions whether defendant had made a settlement with the shipper as to such demurrage, and whether, if so, the cancellation of the charges was a valid settlement of a disputed claim or for the purpose of making a concession in violation of the law, were held to be questions of fact for the jury. *Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 232 Fed. 946.

1909 Supp., p. 255, sec. 1.

"Transportation" as including what—*In general.*—Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that so far as interstate carriers by rail were concerned the entire body of such services should be included together under the single term "transportation" and subjected to the provisions of the Act respecting reasonable rates and the like." *Cleveland, etc., R. Co. v. Dettlebach*, (1916) 239 U. S. 588, 36 S. Ct. 177, 60 U. S. (L. ed.) 453; *Southern R. Co. v. Prescott*, (1916) 240 U. S. 632, 36 S. Ct. 469, 60 U. S. (L. ed.) 836, *reversing* (1914) 99 S. C. 422, 83 S. E. 781.

It is apparent, from the addition to the definition of "transportation" contained in this amendment, that Congress intended and clearly succeeded in including within that term certain services which theretofore had not been embraced within it and over which Congress deemed it advisable that the Interstate Commerce Commission should have power and control. These were ventilation, refrigeration, icing, storage and handling of property transported. This power was conferred upon the commission for the avowed purpose, among others, of relieving the shipper of the task and annoyance of dealing with more than one person. These were new matters and therefore were additions to what was meant by transportation as defined in the original Act. But the addition of the word "cars" in the amendment made no addition to the definition in the original Act, because cars were already embraced within it. *Pennsylvania R. Co. v. U. S.*, (W. D. Pa. 1915) 227 Fed. 911, *affirmed* (1916) 242 U. S. 208, 37 S. Ct. 95, 61 U. S. (L. ed.) 251.

Warehouseman's services.—Where the bill of lading in accordance with the published regulations provided that "every service" to be performed under it, including the service of the connecting or terminal carrier, should be subject to the conditions specified, and among these an express condition governing the company's responsibility as warehouseman for property not removed within forty-eight hours after notice of arrival, such a retention of goods was a terminal service forming a part of the "transportation" in the sense of the federal Act and governed by that Act. *Southern R. Co. v. Prescott*, (1916) 240 U. S. 632, 36 S. Ct. 469, 60 U. S. (L. ed.) 836, *reversing* (1914) 99 S. C. 422, 83 S. E. 781.

Furnishing transportation upon reason-

able request—Rule stated.—This section requires railroad companies to provide and furnish transportation to shippers upon reasonable request therefor. *Mensha Paper Co. v. Chicago, etc., R. Co.*, (1916) 241 U. S. 55, 36 S. Ct. 501, 60 U. S. (L. ed.) 885, *affirming* (1915) 159 Wis. 508, 149 N. W. 751.

Where coal is sold f. o. b. at the mine for transportation to purchasers in another state the movement initiated is an interstate one and the duty of a carrier to furnish cars is an interstate duty. *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746; *Pennsylvania R. Co. v. Clark Bros. Coal Min. Co.*, (1915) 238 U. S. 456, 35 S. Ct. 896, 59 U. S. (L. ed.) 1406, *reversing* (1913) 241 Pa. St. 515, 88 Atl. 754.

Jurisdiction of action for failure to furnish cars.—Where damages are sought by a shipper against a carrier for failure to furnish cars and there is no administrative question involved requiring preliminary investigation by the Interstate Commerce Commission, sections 8 and 9, providing for the bringing of actions for damages in the federal court, do not prevent an action in a state court by virtue of section 22, which in part provides as follows: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies." *Pennsylvania R. Co. v. Sonman Shaft Coal Co.*, (1916) 242 U. S. 120, 37 S. Ct. 46, 61 U. S. (L. ed.) 188, *affirming* (1913) 241 Pa. St. 487, 88 Atl. 746.

Switch connections.—In *Chicago, etc., R. Co. v. State*, (Okla. 1916) 157 Pac. 1039, it was held that the last two sentences of this section conferring jurisdiction upon the Interstate Commerce Commission to require switch connections to be made with any lateral branch line of railroad or private side track, where such connection is reasonably practicable and will furnish sufficient business of an interstate character to justify the same, did not deprive the corporation commission of Oklahoma of jurisdiction to require switch connection to be made with a private side track or spur, where the business of an intrastate character was sufficient to warrant the making of such an order, under section 33, art. 9, of the state constitution, which authorizes the corporation commission, when the owner of any industry near or within a reasonable distance of any track at his own expense has constructed a switch leading from such railroad to such industry to require such railroad to furnish the switch stand and frog and other necessary material for making connection with such side track or spur under such reasonable

terms, conditions and regulations, as the commission may prescribe.

Liability of railroad to caretakers of live stock riding on free pass.—A person in charge of an interstate shipment of live stock, traveling on a freight train upon a pass issued pursuant to the terms of the contract of shipment, as permitted by this section, which excepts necessary caretakers of live stock from the prohibition against the issuance of any "interstate free pass," must be regarded as a passenger for hire, to whom the carrier must respond in damages in case of his injury through the carrier's negligence, notwithstanding a stipulation in the contract purporting to release the carrier from all liability for any personal injury which he may sustain. *Norfolk Southern R. Co. v. Chatman*, (1916) 244 U. S. 276, 37 S. Ct. 499, 61 U. S. (L. ed.) 1131, L. R. A. 1917F 1128, *affirming* (C. C. A. 4th Cir. 1915) 222 Fed. 802, 138 C. C. A. 350.

A notice to shippers that return passes to caretakers of live stock will not be allowed is all that can be claimed for a provision in a carrier's published tariff that "free or reduced transportation shall not be issued for shippers or caretakers in charge of live-stock shipments, whether carloads or less, and such shippers or caretakers shall pay full fare returning." Such provision implies that passes will be issued by the carrier to the destination of the shipment. *Norfolk Southern R. Co. v. Chatman*, (1916) 244 U. S. 276, 37 S. Ct. 499, 61 U. S. (L. ed.) 1131, L. R. A. 1917F 1128, *affirming* (C. C. A. 4th Cir. 1918) 222 Fed. 802, 138 C. C. A. 350.

The failure of the published tariffs of a carrier to make a separate rate, payable in money, for the carriage of a caretaker of an interstate shipment of live stock, or to state separately how much of the published rate for which the carrier is to transport the live stock and their caretaker to destination is to be treated as payment for the transportation of the stock and how much for the carriage of the caretaker, does not make the latter's presence on a freight train in charge of the shipment unlawful, so as to defeat his right to recover damages in case of injury through the carrier's negligence. *Norfolk Southern R. Co. v. Chatman*, (1916) 244 U. S. 276, 37 S. Ct. 499, 61 S. Ct. (L. ed.) 1131, *affirming* (C. C. A. 4th Cir. 1915) 222 Fed. 802, 138 C. C. A. 350.

1909 Supp., p. 260, sec. 2.

Contents, construction and sufficiency of schedules.—This section provides that the tariffs shall plainly state the rates, etc. This statutory provision requiring simplicity in the tariffs is satisfied when the schedule is made as plain as a sub-

ject inherently complex will permit. Tariff schedules and their arrangement with reference to simplicity and precision follow the outlines prescribed by the Interstate Commerce Commission and must meet the approval of that tribunal. Ordinarily the courts make no mistake in deferring to its expert judgment touching the best methods of complying with the statutory mandate as to plainness and lucidity in the arrangement of tariff schedules. *Chicago, etc., R. Co. v. Theis*, (1915) 96 Kan. 494, 152 Pac. 619.

Publication and filing—Necessity.—The Act requires a carrier to publish passenger as well as freight rates. "It makes no difference that section 6 as amended provides for the publication of tariff rates on the transportation of freight making no mention of passenger rates. The provision must be read and considered in connection with the entire section, when it will clearly appear that the provision for publishing and posting rates is not limited to the shipment of merchandise but by implication if not in terms includes passenger service." *U. S. v. Grand Trunk R. Co.*, (W. D. N. Y. 1915) 225 Fed. 283.

The publication and filing of tariff rates relating to the transportation of passengers from one point to another in the United States is required although the destination is reached through a foreign country. While imports from a foreign country to the United States concededly are not included in the Act to regulate commerce, commerce of a domestic origin, although transported into or through a foreign country, is unquestionably included within its provisions. *U. S. v. Grand Trunk, etc., R. Co.*, (W. D. N. Y. 1915) 225 Fed. 283.

Where a railroad company filed with the secretary of the Interstate Commerce Commission schedules showing the mileage of the shipments and of the rates therefor, filed a copy of these schedules in its division freight office and tacked a sign in a conspicuous place at its station from which shipments originated giving notice that freight schedules applying from the station were on file in its division freight office, it was held that such schedules were valid and legal although there was no proof that copies of these schedules had ever been filed in the offices from which the freight originated or any other freight office of the company or anywhere else. Failure to post the schedules in the office from which the goods were shipped did not authorize an unlawful rate, as this is merely directory. *Southern R. Co. v. Wilmont Oil Mills*, (1916) 105 S. C. 51, 89 S. E. 476.

Burden of proof.—The burden is on the carrier company to prove that required publication was made, if its purpose is

to charge a shipper with notice of the published rates and conditions upon which goods are received for shipment. A carrier may not disregard the provisions of the Act relating to publication of the schedules and still be entitled to every benefit that results from a proper compliance with the law. *U. S. Horseshoe Co. v. American Express Co.*, (1915) 250 Pa. St. 527, 95 Atl. 706.

Effect of published rates—*In general.*—"The effect of filing schedules of rates with the Interstate Commerce Commission is to make the published rates binding upon shipper and carrier alike, thus making effectual the purpose of the Act to have but one rate, open to all alike and from which there can be no departure. *Dayton Coal, etc., Co. v. Cincinnati, etc., R. Co.*, (1915) 239 U. S. 446, 36 S. Ct. 137, 60 U. S. (L. ed.) 375; *Alabama Great Southern R. Co. v. McFadden*, (E. D. Pa. 1916) 232 Fed. 1000.

It is clear with respect to the service governed by the federal statute, that the parties are not at liberty to alter the terms of the service as fixed by the filed regulations. *Southern R. Co. v. Prescott*, (1916) 240 U. S. 632, 36 S. Ct. 469, 60 U. S. (L. ed.) 836, *reversing* (1914) 99 S. Ct. 422, 83 S. E. 781, and *following* *Kansas City Southern R. Co. v. Carl*, (1913) 227 U. S. 639, 33 S. Ct. 391, 57 U. S. (L. ed.) 683.

Terminal services.—*In* *Southern R. Co. v. Prescott*, (1916) 240 U. S. 632, 36 S. Ct. 469, 60 U. S. (L. ed.) 836, *reversing* (1914) 99 S. Ct. 422, 83 S. E. 781, it was held that inasmuch as all terminal services incident to an interstate shipment are within the federal Act, where the conditions of liability while the goods are retained after notice of arrival at their destination are stipulated in the bill of lading under the filed regulations, as a condition of responsibility as warehouseman, the conditions thus fixed are controlling, and the parties cannot substitute therefor a special agreement.

Acceptance of joint tariff rates by connecting carriers.—The practice by connecting carriers of accepting joint tariff rates without formal notice was recognized by the Interstate Commerce Commission in May, 1907, requiring the acceptance to be specifically given and certified to the commission, thus avoiding the confusion and misunderstandings which arose under the former practice. See *Dayton Coal, etc., Co. v. Cincinnati, etc., R. Co.*, (1915) 239 U. S. 446, 36 S. Ct. 137, 60 U. S. (L. ed.) 375.

Payment of commission to shipper or forwarder.—A corporation engaged in forwarding or bringing goods for importers from the place of purchase in Europe to their destination in the United States, charging the importers for the transportation and such other services as it may

perform, may not be allowed by a railway company a percentage upon the latter's published rates, and a salary as an inducement to ship by its line, without violating the prohibition of the Act of Feb. 4, 1887, § 6, as amended by the Act of June 29, 1906, § 2; and such allowance cannot be justified under section 15 of the earlier Act as amended by section 4 of the later Act, as being an allowance for a transportation service furnished by a shipper. *Lehigh Valley R. Co. v. U. S.*, (1916) 243 U. S. 444, 37 S. Ct. 434, 61 U. S. (L. ed.) 839, *affirming* 222 Fed. 685.

Demurrage.—An interstate carrier may lawfully adopt a demurrage rule exacting demurrage charges on private cars detained on the carrier's tracks while still in railroad service. *Swift v. Hocking Valley R. Co.*, (1916) 243 U. S. 281, 37 S. Ct. 287, 61 U. S. (L. ed.) 722, *affirming* (1915) 93 Ohio St. 143, 112 N. E. 212, L. R. A. 1917E 916.

Contract of transportation—Limitation of liability.—A shipper of live stock in interstate commerce is bound by stipulations in the bill of lading, in conformity with the carrier's official tariffs, classifications, and rules duly published and filed with the Interstate Commerce Commission, limiting liability to an agreed value on which a reduced rate was based, and conditioning any liability upon the giving of written notice to the terminal carrier within five days after the stock was removed from the cars at destination. *Erie R. Co. v. Stone*, (1916) 244 U. S. 332, 37 S. Ct. 633, 61 U. S. (L. ed.) 1173.

1909 Supp., p. 264, sec. 3.

Report—Findings of fact.—Formal and precise findings by the Interstate Commerce Commission are unnecessary in orders affecting railway rates, except where damages or reparation is awarded. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

1909 Supp., p. 268, sec. 5.

Time of filing complaint for damages.—The requirement of this section that all complaints for the recovery of damages shall be filed with the Interstate Commerce Commission "within two years from the time the cause of action accrues, and not after," is not a mere statute of limitations, but is jurisdictional, and prevents consideration by the Commission of such a complaint when not filed in time. *U. S. v. Interstate Commerce Commission*, (1914) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) —, *reversing* (1914) 42 App. Cas. (D. C.) 514.

The day when overcharges by a carrier are actually paid, not the day when the shipment was delivered, is the time

when the shipper's cause of action to recover back the overcharges "accrues," within the meaning of the requirement of the Act of June 29, 1906 (34 Stat. at L. 590, ch. 3591), § 5, that all complaints for the recovery of damages shall be filed with the Interstate Commerce Commission within two years from the time the cause of action accrues. *U. S. v. Interstate Commerce Commission*, (1918) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) —, reversing (1914) 42 App. Cas. (D. C.) 514.

1909 Supp., p. 271, sec. 7.

State laws affecting keeping of records by carriers.—In *State v. Missouri, etc., R. Co.*, (1915) 96 Kan. 609, 152 Pac. 777, it was held that the provision of a state statute concerning the bringing into the state of intoxicating liquor for unlawful use, which required the carrier to file with the county clerk a statement in writing setting forth the date, name and address of the consignee, place of delivery and person to whom delivered, the kind and amount of the liquor, and that the county clerk shall permit all persons so desiring to inspect the statements, was not in violation of the provision of this section that "it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission." The ground of this decision was that there could be no conflict between the provisions of the state law and the Interstate Commerce Act, since the commodity involved in the transaction was not a legitimate subject of interstate commerce, the Webb-Kenyon Act (see 1914 Supp., Fed. Stat. Annot., p. 208), to which the state statute in question was complementary, having divested it of its interstate character.

1909 Supp., p. 273, sec. 7, "Par. 7." [*Carmack amendment.*]

I. PURPOSE AND DOMINATING FEATURES OF AMENDMENT

The aim and purpose of the Carmack amendment was to establish unity of responsibility. *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948. See to the same effect, *New York, etc., R. Co. v. Peninsula Produce Exch.*, (1916) 240 U. S. 34, 36 S. Ct. 230, 60 U. S. (L. ed.) 511; *Hudson v. Chicago, etc., R. Co.*, (D. C. Minn. 1915) 226 Fed. 38.

The Carmack amendment directs a carrier receiving property for interstate transportation to issue a through bill of lading therefor, although the place of destination is on the line of another carrier; subjects the receiver carrier to liability for any injury to the property caused by it or any other carrier in the course of the transportation, and requires a con-

necting carrier on whose line the property is injured to reimburse the receiving carrier where the latter is made to pay for such injury. Thus, under the operation of the amendment, the connecting carrier becomes the agent of the receiving carrier for the purpose of completing the transportation and delivering the property. *Northern Pac. R. Co. v. Wall*, (1916) 241 U. S. 87, 36 S. Ct. 493, 60 U. S. (L. ed.) 905, reversing on other grounds, (1914) 50 Mont. 122, 145 Pac. 291.

The purpose of the amendment was to do away with the difficulties shippers had encountered in seeking to recover against carriers for damages carried over more than one line of railroad. The obstacles met by the shipper in attempting to locate responsibility for damages to property shipped over different lines of railroad were almost inseparable, and frequently the shipment was not only over several lines but for long distances and in several different states. To afford a remedy for such a condition Congress gave the shipper the right to institute an action against the carrier receiving his property for an interstate shipment, and to recover damages occurring anywhere in the course of the transportation, leaving it to the carrier receiving the property to recover from the carrier on whose line or lines the damage or injury occurred. *Looney v. Oregon Short Line R. Co.*, (1916) 271 Ill. 538, 111 N. E. 509.

II. EFFECT ON STATE LAWS

In general.—By the Carmack amendment, Congress has legislated directly upon the carrier's liability for loss of and damage to interstate shipments, and this and other federal legislation on the subject of interstate commerce is supreme and exclusive, and supercedes all state laws. *Atchison, etc., R. Co. v. Harold*, (1916) 241 U. S. 371, 36 S. Ct. 665, 60 U. S. (L. ed.) 1050; *Michelson v. Judson Freight Forwarding Co.*, (1915) 268 Ill. 546, 109 N. E. 281; *Miller v. Atchison, etc., R. Co.*, (1916) 97 Kan. 782, 156 Pac. 780; *Western Union Tel. Co. v. Foster*, (1916) 224 Mass. 365, 113 N. E. 192; *Washington Horse Exchange v. Louisville, etc., R. Co.*, (N. C. 1916) 87 S. E. 941; *Chicago, etc., R. Co. v. Rocky County Sugar Co.*, (1916) 162 Wis. 374, 156 N. W. 607.

Construction of proviso of amendment.—The proviso "that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law" is construed to relate to existing federal law and not to any state law. *St. Louis, etc., R. Co. v. Akard*, (Okla. 1916) 159 Pac. 344.

State laws affecting limitation of liability.—State laws or policy nullifying

contracts limiting the liability of a carrier for loss or damage to the agreed or declared value upon which the rate was based are superseded so far as interstate shipments are concerned by the Carmack amendment which furnishes the exclusive rule on the subject of the liability of a carrier under contracts for interstate shipment, and the state courts are bound by the federal decisions in construing the same. *Washington Horse Exch. v. Louisville, etc., R. Co.*, (1916) 171 N. C. 65, 87 S. E. 941.

In an action in damages upon a contract for an interstate shipment of live stock, a provision of a state constitution [Okla.] that "any provision of any contract or agreement, express or implied, stipulating for notice or demand other than such as may be provided by law, as a condition precedent to establish any claim, demand or liability, shall be null and void" was held to be without force, being abrogated by the Carmack amendment. *St. Louis, etc., R. Co. v. Wynn*, (Okla. 1916) 153 Pac. 1156.

III. SHIPMENTS AFFECTED

Foreign shipments.—Congress did not, by the Carmack amendment, extend the rule to make the domestic carrier liable for loss occasioned by the negligence of a foreign carrier and for transportation to foreign countries of commerce but only for goods received "for transportation from a point in one state to a point in another state," meaning states and territories within the United States. *Aldrich v. Atlantic Coast Line R. Co.*, (1916) 104 S. C. 364, 89 S. E. 315.

IV. RECEIPT OR BILL OF LADING

While the statute expressly requires a common carrier to issue a receipt or bill of lading for goods accepted for transportation from one state into another, it is not necessary to the right of the shipper to recover for loss or damage to the shipment that it do so. *Barrett v. Northern Pac. R. Co.*, (1916) 29 Idaho 139, 157 Pac. 1016.

Under this Act and the regulations of the Interstate Commerce Commission respecting tariffs and uniform bills of lading, when the delivery to the carrier is complete though no bill of lading for the particular shipment was issued, the rights and liabilities of the parties are regulated by the uniform bill of lading so far as applicable. *Standard Combed Thread Co. v. Pennsylvania R. Co.*, (1915) 88 N. J. L. 257, 95 Atl. 1002.

Interpretation of bill of lading.—A bill of lading is a contract and within the rule that the laws in force at the time and place of the making of a contract, and which affects its validity, performance and enforcement, enter into and form

a part of it, as if they were expressly referred to or incorporated in its terms. It follows that an interstate bill of lading should be interpreted in the light of the Carmack amendment. *Northern Pac. R. Co. v. Wall*, (1916) 241 U. S. 87, 36 S. Ct. 493, 60 U. S. (L. ed.) 905, *reversing* on other grounds (1914) 50 Mont. 122, 145 Pac. 291.

The proper construction of a bill of lading is a question for the federal courts. *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948, *affirming* (1914) 15 Ga. App. 142, 82 S. E. 784.

In *Cincinnati, etc., R. v. Rankin*, (1916) 241 U. S. 319, 36 S. Ct. 555, 60 U. S. (L. ed.) 1022, the court said: "We cannot assent to the theory apparently adopted below that the interpretation and effect of a bill of lading issued by a railroad in connection with an interstate shipment present no federal question unless there is affirmative proof showing actual compliance with the Interstate Commerce Act. It cannot be assumed, merely because the contrary has not been established by proof, that an interstate carrier is conducting its affairs in violation of law. Such a carrier must comply with strict requirements of the federal statutes or become subject to heavy penalties, and in respect of transactions in the ordinary course of business it is entitled to the presumption of right conduct. . . . The law will presume that all things are rightly done, unless the circumstances of the case overturn this presumption."

Power of connecting carrier to engraff conditions on shipper's contract with initial carrier.—The terms of the original bill of lading for an interstate shipment which governs the entire transportation, cannot be altered by a second bill of lading issued by a connecting carrier, since the latter is already bound to transport the shipment at the rate and upon the terms named in the original bill of lading, and the acceptance by the shipper of the second bill is therefore without consideration and was void. *Missouri, etc., R. Co. v. Ward*, (1916) 244 U. S. 383, 37 S. Ct. 617, 61 U. S. (L. ed.) 1213, *affirming* (Tex. Civ. App. 1914) 169 S. W. 1035.

V. WHO IS INITIAL CARRIER

Electric street railway.—In *Ross v. Maine Cent. R. Co.*, (1914) 112 Me. 63, 90 Atl. 711, the facts were as follows: Potatoes were shipped from a station on the line of the Bangor Railway and Electric Company, an electric railroad corporation, consigned to the shipper's order at Bangor. They were intended by the shipper for through and continuance transportation to Hoboken, New Jersey. At Bangor the cars were received by the

defendant and forwarded. There was a through tariff rate from the point of shipment to Hoboken, and when the defendant received the car it advanced to the Bangor Railway and Electric Company its proportion of the through tariff rate. The defendant issued through bills of lading to Hoboken and collected of the shipper "heater charges" which were intended to cover heating the cars from Bangor to Hoboken. The potatoes were frozen while in transit, but not on the defendant's line. It was held that the receipt by the Bangor Railway and Electric Company of its proportion of the through tariff charges was some evidence of "a common control, management or arrangement for a continuous carriage or shipment" as defined in the Interstate Commerce Act, so as to bring that corporation within the scope of the Act to regulate commerce as amended by the Carmack amendment, and make it liable, as initial carrier, for the defaults of connecting carriers, but that the defendant, having assumed the obligation of heating after the potatoes had left the possession of the Bangor Railway and Electric Company, was to be deemed the initial carrier as to defaults in heating during the course of transportation. See further *Ross v. Maine Cent. R. Co.*, (1915) 114 Me. 287, 96 Atl. 223, wherein this decision was held to be the law of the case as to the defendant railroad in respect to the contract to carry, in an action for the freezing of carloads of potatoes and as to claims asserted under the Carmack amendment.

Switching railway.—A common carrier which received goods for interstate shipment is the initial carrier, although it only switches the car in which they are loaded to the lines of another common carrier to be transported out of the state. *Barrett v. Northern Pac. R. Co.*, (1916) 29 Idaho 139, 157 Pac. 1016.

VI. LIABILITY OF INITIAL CARRIER

1. In General

The Carmack amendment does not use the term "initial carrier" nor "primary carrier;" but the words employed refer to the initial carrier by designating such carrier as the one receiving property for an interstate shipment. The carrier made liable by the amendment has been treated by the courts continually as the initial or first carrier receiving the goods. Since the requirement that the carrier receiving property for a continuous interstate shipment shall issue a receipt or bill of lading is confined to the initial carrier and as there is no requirement that any connecting carrier shall issue a receipt or bill of lading it was evidently contemplated that the liability should attach to the first carrier only. *Looney v. Oregon Short Line R. Co.*, (1916) 271 Ill. 538, 111 N. E. 509.

2. Period of Liability

Under the Carmack amendment a common carrier which receives goods for transportation from a point in one state to a point in another, if it routes the consignment over the line of another common carrier, makes the latter its agent and is liable to the owner of the goods, or his assignors, for any damage which results from negligence or carelessness in transportation, whether the damage occurs upon its own line or upon that of the carrier to which it delivers the consignment. But an initial carrier is not liable for damage to goods occurring on lines not its own, and over which they were routed without notice to it. The obligation of such a carrier ceases when the goods reach the destination, in good condition, to which they were originally consigned. *Barrett v. Northern Pac. R. Co.*, (1916) 29 Idaho 139, 157 Pac. 1016.

3. Nature of Liability

In *Cincinnati & Tex. Pac. Ry. v. Rankin*, (1916) 241 U. S. 319, 36 S. Ct. 555, 60 U. S. (L. ed.) 1022, L. R. A. 1917A 265, counsel conceded the liability of a common carrier under the long recognized common-law rule, not only for negligence but also as an insurer, but insisted that the Carmack amendment had changed this rule to the extent that in *Adams Express Co. v. Croninger*, (1913) 226 U. S. 491, 33 S. Ct. 148, 57 U. S. (L. ed.) 314, 44 L. R. A. (N. S.) 257, the amendment was held to restrict a carrier's liability to loss "caused by it" and that consequently the trial court erred when it charged: "In this case the carrier is held to the highest degree of care for the safe transportation of the animals." The court said: "Construing the Carmack amendment, was said through Mr. Justice Lurton in the case cited, 226 U. S. pp. 506-507: 'The liability thus imposed is limited to any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered, and plainly implies a liability for some default in its common law duty as a common carrier.' Properly understood, neither this nor any other of our opinions holds that this amendment has changed the common law doctrine theretofore approved by us in respect of a carrier's liability for loss occurring on its own line."

The initial carrier is required to issue a receipt or bill of lading, with the effect of making such contract the measure of liability between the parties. *Gulf, etc., R. Co. v. Texas Packing Co.*, (1916) 244 U. S. 31, 37 S. Ct. 487, 61 U. S. (L. ed.) 970.

While the carrier is made liable to the shipper for loss, damage or injury caused by it, and no contract may relieve it does not attempt to change the common-law rule as to the effect of an act of God in

excusing the carrier where loss results proximately therefrom. Where proof is given that goods are damaged in the hands of the carrier, the burden is upon him to show that the damage arose from some cause for which he was not liable. But where the carrier shows that the loss was occasioned by the act of God he has done all that is required. If the shipper then claims that the carrier's negligence also directly contributed to the negligence he must show that fact. *Barnet v. New York, etc., R. Co.*, (1918) 222 N. Y. 195, 118 N. E. 625, *reversing* (1915) 167 App. Div. 738, 153 N. Y. S. 374.

4. Liability for Delay

Delay in transportation.—The Carmack amendment imposes on the "initial carrier" liability for delay occurring on the line of its connection without physical damage to the property. *New York, etc., R. Co. v. Peninsula Produce Exch.*, (1916) 240 U. S. 34, 36 S. Ct. 230, 60 U. S. (L. ed.) 511, *affirming* (1914) 122 Md. 215, 89 Atl. 433, wherein the court said: "The words 'any loss, damage, or injury to such property' caused by the initial carrier or by any connecting carrier are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination. It is not necessary, nor is it natural in view of the general purpose of the statute, to take the words 'to the property' as limiting the word 'damage' as well as the word 'injury' and thus as rendering the former wholly superfluous. It is said that there is a different responsibility on the part of the carrier with respect to delay from that which exists where there is a failure to carry safely. But the difference is with respect to the measure of the carrier's obligation; the duty to transport with reasonable despatch is none the less an integral part of the normal undertaking of the carrier. And we can gather no intent to unify only a portion of the carrier's responsibility. Further, it is urged, that the amendment provides that the initial carrier may recover from the connecting carrier 'on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property,' and this, it is said, shows that the 'loss, damage, or injury' described is that which may be localized as having occurred on the line of one of the carriers and therefore should be limited to physical loss or injury. But we find no difficulty in this, as the damages required to be paid by the initial carrier are manifestly regarded as resulting from some breach of duty, and the purpose is simply to provide for a recovery against the connecting carrier if the latter, as to

its part of the transportation, is found to be guilty of that breach. The view we have expressed finds support in the explicit terms of the act of January 20, 1914, c. 11, 38 Stat. 278 [amending Judicial Code, sec. 28; see JUDICIARY], which provides 'that no suit brought in any state court of competent jurisdiction against a railroad company . . . to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section twenty of the Act to regulate commerce . . . shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of \$3,000.' If the language of sec. 20 can be regarded as ambiguous, this legislative interpretation of it as conferring a right of action for delay, as well as for loss or injury to the property in the course of transportation is entitled to great weight."

In *Hudson v. Chicago, etc., R. Co.*, (D. C. Minn. 1915) 226 Fed. 38, it appeared that the defendant railway company in the shipments involved was the intermediate common carrier in interstate commerce, that the cause of action rested upon delay by the common carriers, or some of them. The evidence showed that the delay did not occur on the line of the intermediate carrier. It was held that such carrier could not be sued for the delay, regardless of whether it had or had not issued a bill of lading.

5. Wrongful Delivery or Diversion

The aim and purpose of the Carmack amendment was to establish unity of responsibility, and the words of the statute are comprehensive enough to embrace responsibility for all losses resulting from any failure to discharge a carrier's duty, as to any part of the agreed transportation, which, as defined in the federal Act, includes a wrongful delivery. *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948, *affirming* (1914) 15 Ga. App. 142, 82 S. E. 784.

6. Subrogation to Defenses of Connecting Carrier

Although the initial carrier may be by rail, if any connecting company along the designated or usual route of shipment, there being no route designated, is a carrier by water, and the loss or injury occurs by the wrong of such company, the initial carrier may avail itself of the federal legislation applicable to transportation companies of that character, limiting the quantum of recovery in certain instances and at times relieving of responsibility altogether; the principle being that, in cases coming within the effects of the law, the initial carrier, so

far as the shipper is concerned, is held to have contracted for through transportation, and is liable for the default of itself or any connecting carrier, and may avail itself of any defenses or of limitations of liability open to the carrier causing the loss. *Brinson v. Norfolk Southern R. Co.*, (1915) 169 N. C. 425, 86 S. E. 371, wherein, in an action brought by the shipper against the initial carrier for the loss of a shipment by the connecting carrier, in a collision on the high seas, it was held that the burden of proof resting upon the defendant to show that the connecting carrier supplied a vessel that was properly manned, equipped and seaworthy was not sustained, so as to make available R. S. sec. 4283 (see the title **LIMITATION OF VESSEL OWNER'S LIABILITY**) limiting the liability to the extent of the owner's interest.

VII. LIABILITY OF CONNECTING CARRIER

Rule stated.—The connecting carrier is not relieved from liability by the Carmack amendment, but the bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation and thus fixes the obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid. "The liability of any carrier in the route over which the articles were routed, for loss or damage, is that imposed by the act as measured by the original contract of shipment so far as it is valid under the act." *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948, *affirming* (1914) 15 Ga. App. 142, 82 S. E. 784.

Nature of liability.—There is nothing in the Act of Congress known as the Hepburn Act, as amended by the Carmack amendment, which will prohibit a shipper of goods in interstate commerce over the lines of several carriers from bringing suit, under the provisions of section 2752 of the Georgia Civil Code of 1910, against the last carrier who received the goods as "in good order" for damages sustained on account of loss of or damage to the goods. *Atlantic Coast Line R. Co. v. Thomasville Live Stock Co.*, (1913) 13 Ga. App. 102, 78 S. E. 1019. The decision in this case was based upon the proviso of the Carmack amendment that "nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action . . . he has under existing law." In deciding the case, the court proceeded upon the theory that the proviso preserves such rights of action as that conferred by section 2752 of the Georgia Civil Code. This rule was pronounced unsound and was expressly overruled in *Southern R. Co. v. Bennett*, (1915) 17 Ga. App. 162, 86 S. E. 418, wherein the court ruled that rights and

remedies conferred by existing state laws, where a shipment accepted by a carrier for interstate transportation has been lost, injured or damaged, were not continued in force by the proviso of the Carmack amendment. The proviso preserves only any right or remedy that the holder of the receipt or bill of lading may have had under the existing federal law at the time of his action. And the court held that a suit for damages based upon section 2752 of the Georgia Civil Code of 1910, cannot be maintained against the last of several connecting carriers, if the loss or damage to the shipment occurred in the course of interstate transportation; that under the provisions of the Carmack amendment the initial carrier alone is liable for damages to interstate shipments, and under the federal regulation of interstate commerce, which supersedes all state regulations upon the same subject, the remedy against the initial carrier is exclusive. But in *Central of Georgia R. Co. v. Waxelbaum Produce Co.*, (Ga. App. 1916) 89 S. E. 635, this decision was in turn expressly overruled. In the latter case it was contended, upon a writ of error from the judgment of the municipal court of Macon denying a second new trial in the case, that the judgment should be reversed on the ground that the lower court had no jurisdiction under section 2752 of the Civil Code to entertain a suit against the last of several connecting carriers because under the provisions of the Carmack amendment the initial carrier alone is liable for damage to interstate shipments. The court said: "While this court in *Southern R. Co. v. Bennett*, (1915) 17 Ga. App. 162, 86 S. E. 418, held that in such a case the initial carrier alone could be sued, the Supreme Court of the United States in *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948, has made a ruling to the contrary. That decision in effect reverses the ruling in the *Bennett Case* and upon review, the decision in the *Bennett Case* is expressly overruled."

VIII. LIMITATION OF LIABILITY

1. In General

But the liability imposed by the statute is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence. *Donavan v. Wells*, (1915) 265 Mo. 291, 177 S. W. 839; *Thomas v. St. Louis, etc., R. Co.*, (1915) 188 Mo. App. 22, 173 S. W. 96; *Cook v. Northern Pac. R. Co.*, (1915) 32 N. D. 340, 155 N. W. 867; *St. Louis, etc.,*

R. Co. v. Wynn, (Okla. 1916) 156 Pac. 346; *Grice v. Oregon-Washington R., etc., Co.*, (1915) 78 Ore. 17, 150 Pac. 862, 152 Pac. 509.

An interstate live stock carrier cannot, by an agreement made in consideration of a reduced rate, and contained in a bill of lading issued pursuant to the Carmack amendment, in conformity with the carrier's tariffs filed with the Interstate Commerce Commission, limit its liability from unusual delay and detention caused by its negligence to the amount actually expended by the shipper in the purchase of food and water for his stock while so detained. *Boston, etc., R. Co. v. Piper*, (1918) 246 U. S. 439, 38 S. Ct. 354, 62 U. S. (L. ed.) —, *affirming* (1916) 90 Vt. 176, 97 Atl. 508.

2. Agreed Valuation

In general.—A carrier may under the Carmack amendment, by a fair, open, just and reasonable agreement in the receipt or bill of lading, limit the amount receivable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates of charges proportioned to the amount of the risk, and no state statute is valid which attempts to interfere with this right. *Cincinnati, etc., R. Co. v. Rankin*, (1916) 241 U. S. 319, 36 S. Ct. 555, 60 U. S. (L. ed.) 1022; *Southern R. Co. v. Bynum*, (1915) 194 Ala. 190, 69 So. 820; *Michelson v. Judson Freight Forwarding Co.*, (1915) 268 Ill. 546, 109 N. E. 281; *U. S. Horse Shoe Co. v. American Express Co.*, (1915) 250 Pa. St. 527, 95 Atl. 706; *Shay v. Union Pac. R. Co.*, (Utah 1915) 153 Pac. 31. The essential choice of rates must be made to appear before a carrier can successfully claim the benefit of such a limitation and relief from full liability. And as no interstate rates are lawful unless duly filed with the commission, it may become necessary for the carrier to prove its schedules in order to make out the requisite choice. Where, however, a bill of lading, signed by both parties, recites that lawful alternate rates based on specified values were offered, such recitals constitute admissions by the shipper and sufficient *prima facie* evidence of choice. If in such a case the shipper wishes to contradict his own admissions, the burden of proof is upon him. *Cincinnati, etc., R. Co. v. Rankin*, (1916) 241 U. S. 319, 36 S. Ct. 555, 60 U. S. (L. ed.) 1022.

Forfeiture of rights under limitation.—A carrier may forfeit his rights under a stipulation limiting his liability to an agreed valuation. Thus where a carrier has converted property intrusted to him for transportation, he will be deemed to have thereby abandoned the contract of shipment, and cannot thereafter insist on the stipulation therein that this

liability shall be limited to a fixed sum, at which the goods are valued, nor insist upon the binding effect of such a stipulation, where the negligence which occasioned the loss was wanton or willful. *Nashville, etc., R. Co. v. C. V. Truitt Co.*, (1915) 17 Ga. App. 236, 86 S. E. 421.

3. Notice of Claim

In general.—It is competent for the parties to agree upon reasonable notice of claim, as for "failure to make delivery" as a condition of liability. A carrier is not necessarily bound to know whether it has delivered to the right person or according to instructions. The transactions of a railroad company are multitudinous and are carried on through numerous employees of various grades. Ordinarily the managing officers, and those responsible for the contest of claims, would be without actual knowledge of the facts of a particular transaction. To this end, it is a precaution of obvious wisdom, and in no respect repugnant to public policy, that the carrier by its contracts should require reasonable notice of all claims against it, even with respect to its own operations. *Georgia, etc., R. Co. v. Blish Milling Co.*, (1916) 241 U. S. 190, 36 S. Ct. 541, 60 U. S. (L. ed.) 948, *affirming* (1914) 15 Ga. App. 142, 82 S. E. 784.

A stipulation in a through bill of lading for an interstate shipment of peaches that the carrier issuing the bill of lading shall not be held liable for damages unless a claim for damages is reported by the consignee in writing to the terminal carrier within thirty-six hours after the consignee has been notified of the arrival of the freight at the place of delivery is valid and not unreasonable. Written notice within the time stipulated of an intention to make a claim for damages, without specifying the amount of the damages claimed, is a sufficient compliance with the stipulation. The failure to comply with the requirement of the stipulation was not excused, where the terminal carrier had a freight agent at the place of delivery in charge of the docks upon which the shipment was delivered, by virtue of the giving of verbal notice of the bad condition of the shipment to the terminal carrier's dock master, or because of the knowledge of such condition by longshoremen working on the docks. *St. Louis, etc., R. Co. v. Starbird*, (1916) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917, *reversing* (1915) 118 Ark. 485, 177 S. W. 912.

To whom given.—A stipulation contained in a bill of lading for an interstate shipment of cattle was that the shipper, as a condition precedent to his right to recover for any injury to the cattle while in transit, should give notice

in writing of his claim to some officer or station agent of the initial carrier before the cattle were removed from the place of destination or mingled with other stock, is satisfied if the notice is given to an officer or station agent of a connecting agent at the place of destination, as under the operation of the Carmack amendment the connecting carrier becomes the agent of the receiving carrier. *Northern Pac. R. Co. v. Wall*, (1916) 241 U. S. 87, 36 S. Ct. 493, 60 U. S. (L. ed.) 905, *reversing* (1914) 50 Mont. 122, 145 Pac. 291.

Connecting carrier is entitled to benefit of contract.—A stipulation in a bill of lading in a case of interstate shipment, that, if claims for damages be not made in writing within ten days after delivery of the property, the carrier shall not be liable, is valid in the absence of any contention that the time limit is unreasonable, and the acceptance by the shipper of a bill of lading containing such provision constitutes a binding contract on his part, and if made with the initial carrier inures to the benefit of the connecting carrier. *Olivit v. Pennsylvania R. Co.*, (1916) 88 N. J. L. 241, 96 Atl. 582.

Waiver.—A stipulation limiting the time for presenting claims is valid if reasonable and cannot be waived. *Metz Co. v. Boston, etc., R. Co.*, (1917) 227 Mass. 307, 116 N. E. 475.

In *Baldwin v. Atlantic Coast Line R. Co.*, (1915) 170 N. C. 12, 86 S. E. 776, it was held that stipulations in bills of lading, covering shipments of live stock, requiring written notice of the claims for damages to be given before the stock is removed from the possession of the carrier, are valid; but it was further held that the requirement that the notice shall be in writing is waived upon proof of actual knowledge of the injury. Nor in such case can the liability of the carrier be predicated upon the fact that the carrier rejected the claim for other reasons when it was presented out of time. *Olivit v. Pennsylvania R. Co.*, (1916) 88 N. J. L. 241, 96 Atl. 582.

It has been held that the provisions of a bill of lading, requiring written notice of damage to be given to the carrier and fixing a time less than that fixed by the statute in which action shall be commenced, in order to be available as defenses, must be pleaded as such; otherwise they are deemed waived. *Gilinsky v. Illinois Cent. R. Co.*, (1915) 98 Neb. 858, 154 N. W. 730.

Live stock.—In *St. Louis, etc., R. Co. v. Wynn*, (Okla. 1915) 153 Pac. 1156, a provision in a contract of an interstate shipment of live stock, providing that, as a condition precedent to a recovery for any damages for delay, loss, or injury to live stock covered by the contract,

the shipper will give notice in writing of the claim therefor, to such agents of the company as may be named in the contract, before such stock is removed from the place of destination and before it mingles with other stock, such notice to be served within one day after the delivery of the stock at its destination, was held to be valid.

4. Time for Bringing Suit

In *Miller v. Atchison, etc., R. Co.*, (1916) 97 Kan. 782, 156 Pac. 780, it appeared that a contract for the transportation of an interstate shipment of live stock on the customary printed form used by carriers and signed by the carrier and shipper contained a provision that no action should be maintained to recover any damages for loss or injuries arising out of the transportation unless commenced within six months from the time the loss or injuries occurred. It contained also a number of provisions by which the carrier sought to limit its liability for loss occasioned by its own negligence. The court held that, while the latter provisions against liability for negligence were against public policy and unenforceable, the contract was not void in toto, but that it should be regarded as divisible in view of its general use by interstate carriers with the approval of the Interstate Commerce Commission, and that the plaintiff's failure to commence his action within six months after the loss and injury occurred barred his right to recover.

5. Termination of Limitation

The limitation of liability agreed upon in a bill of lading applies even after the termination of the carriage and while the goods are in storage pending their delivery to the consignee. *Cleveland, etc., R. Co. v. Dettlebach*, (1916) 239 U. S. 588, 36 S. Ct. 177, 60 U. S. (L. ed.) 453.

So likewise it has been held that the conditions of liability stipulated in the bill of lading under the filed regulations, are controlling when the goods are retained after notice of arrival at destination, and while in possession of the carrier as warehouseman under the stipulation. *Southern R. Co. v. Prescott*, (1916) 240 U. S. 632, 36 S. Ct. 469, 60 U. S. (L. ed.) 836, *reversing* (1914) 99 S. C. 422, 83 S. E. 781.

IX. JURISDICTION OF COURTS

While the state courts have original jurisdiction of an action, civil and transitory, arising under the Carmack amendment, as held in *Galveston, etc., R. Co. v. Wallace*, (1912) 223 U. S. 481, 32 S. Ct. 205, 56 U. S. (L. ed.) 516, cited in the preceding note, such action may be re-

moved to a court of the United States. *Alabama Great Southern R. Co. v. American Cotton Oil Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 11, 143 C. C. A. 313.

X. JURISDICTION OF COURTS

Removal of cause from state to federal court.—A state court has jurisdiction of an action under the Carmack amendment, but the action may be removed to a federal court because of its federal nature (see 1916 Supp. Fed. Stat. Annot., p. 128, Act of Jan. 20, 1914), where the matter in controversy exceeds the sum or value of \$3,000. *Southern Pac. Co. v. Stewart*, (1918) 245 U. S. 359, 38 S. Ct. 203, 62 U. S. (L. ed.) —.

XI. PARTIES

Any lawful holder of a bill of lading, issued by the initial carrier pursuant to the Carmack amendment, upon receiving property for interstate transportation, may maintain an action for loss, damage or injury to such property caused by any connecting carrier to whom the goods are delivered. *Carr v. Pennsylvania R. Co.*, (1916) 88 N. J. L. 235, 96 Atl. 588.

The words "lawful holder" cannot be said to mean only the owner of the shipment or someone shown to be duly authorized to act for him in such a way as to render any judgment recovered in the action against the carrier *res judicata* in any other action, although by section 8 of the earlier Act a carrier is made liable "to the person or persons injured" in consequence of any violation of the Act, since to adopt this view would permit the general purpose of the latter section to control the purpose of the amendment, which is special and definitely expressed the lawful holder of the bill of lading to be the person to whom the carrier shall be liable. *Pennsylvania R. Co. v. Olivet*, (1916) 243 U. S. 574, 37 S. Ct. 468, 61 U. S. (L. ed.) 908, *affirming* (1916) 88 N. J. L. 376, 96 Atl. 589.

The term "lawful holder," as used in the Act, comprehends the owner of the property transported, or the one beneficially entitled to recover for the loss or injury, and manual possession of the bill of lading is not a prerequisite to the right to sue. *Aultman v. Atlantic Coast Line R. Co.*, (1916) 71 Fla. 276, 71 So. 283; *Norfolk Southern R. Co. v. Norfolk Trucker's Exchange*, (1916) 118 Va. 650, 88 S. E. 318.

XII. PLEADING

In general.—The Carmack amendment supersedes the common-law rule regarding negligent delay in the transportation of live stock and its provisions may be invoked when the proof shows its applica-

bility, though not averred in any pleading filed in the case. *Karr v. Baltimore, etc., R. Co.*, (1915) 76 W. Va. 526, 86 S. E. 43.

Issuance of receipt or bill of lading.—“The Carmack Amendment requires the carrier receiving property for transportation between points in different states to issue a receipt or bill of lading therefor and makes the carrier liable to the lawful holder thereof for any loss, damage or injury to such property. While there is no specific allegation in the complaint that such bill of lading or receipt was issued, as the law makes it the duty of the carrier to issue the same the presumption is that such duty was complied with.” *Southern Pac. Co. v. Stewart*, (1918) 245 U. S. 359, 38 S. Ct. 203, 62 U. S. (L. ed.) —.

XIII. DAMAGE

Mental suffering.—In a shipment in interstate commerce, damage claimed for mental suffering only, on account of delay of the delivery of the shipment, cannot be recovered. *Southern Express Co. v. Byers*, (1916) 240 U. S. 612, 36 S. Ct. 410, 60 U. S. (L. ed.) 825, *reversing* (1914) 165 N. C. 542, 81 S. E. 741.

Freight paid.—The recovery, as a part of the damages caused by a delay in transporting an interstate shipment of perishable freight, of the freight paid upon delivery at destination, is properly allowed, notwithstanding the prohibitions of the Interstate Commerce Act, against deviations from the filed tariffs and schedules, and against rebates and undue preferences and discriminations, especially where the bills of lading require damages to be computed upon the basis of the value of the property at the place and time of shipment. *Pennsylvania R. Co. v. Olivet*, (1916) 243 U. S. 574, 37 S. Ct. 468, 61 U. S. (L. ed.) 908, *affirming* (1916) 88 N. J. L. 376, 96 Atl. 589.

When the bill of lading of an interstate shipment contains a condition that the amount of any loss or damage for which the carrier is liable "shall be computed on the basis of the value of the property, being the bona fide invoice price, if any, to the consignee, including the freight charge, if prepaid, at the place and time of shipment," it is proper for the judge to instruct the jury that, if the carrier was liable, the plaintiff was entitled to recover the freight paid by him as a part of his damages. *Carr v. Pennsylvania R. Co.*, (1916) 88 N. J. L. 235, 96 Atl. 588.

1912 Supp., p. 112, sec. 7. [*Application, etc.*]

Telegraph companies.—Congress has taken possession of the field of interstate

commerce by telegraph and has prescribed the rules which shall govern the transaction of such commerce. Hence a provision in a state constitution, which declares that "any provision of any contract or agreement, express or implied, stipulating for notice or demand other than such as may be provided by law, as a condition precedent to establish any claim, demand or liability, shall be null and void," does not render void a clause in a contract, for sending a telegram, which provides that the company shall not be liable for damages or statutory penalties in any case where the claim is not presented within sixty days after the message is filed with the company for transmission. *Gardner v. Western Union Tel. Co.*, (C. C. A. 8th Cir. 1916) 231 Fed. 405, 145 C. C. A. 8th Cir. 1916) 231 Fed. 405, 145 C. C. A. 399. See to the same effect *Western Union Tel. Co. v. Spencer Bank*, (Okla. 1916) 156 Pac. 1175; *Western Union Tel. Co. v. Orr*, (Okla. 1916) 158 Pac. 1139.

The rules that justify common carriers of interstate commerce in limiting their liability also justify interstate carriers of telegraph messages in limiting their liability for damages caused by delay in delivering the messages. *Bailey v. Western Union Tel. Co.*, (1916) 97 Kan. 619, 156 Pac. 716.

In *Western Union Tel. Co. v. Foster*, (1916) 224 Mass. 365, 113 N. E. 192, it was held that this section did not cover the local delivery by the ticker service radiating from Boston offices, to patrons in that city of each of the telegraph companies, of information bought by the telegraph companies and received in interstate commerce, but delivered in intrastate commerce.

Until the enactment of this statute classifying telegraph, telephone and cable companies as public service agencies under federal control, there was no federal Act in force with reference to contracts for the transmission of messages, and a suit for damages for the incorrect transmission of a telegram based on a contract for the dispatch of the message made prior to this enactment was governed by the law of the state. *Western Union Tel. Co. v. Bassett*, (1916) 111 Miss. 468, 71 So. 750.

1912 Supp., p. 112, sec. 7. [*Express and sleeping car companies, etc.*]

State regulation.—The power of a state to enact that four passenger trains each way, if so many are run daily, Sundays excepted, shall stop at all county-seat stations, was not taken away, though it may lead to an incidental interference with interstate trains, by this section making it the duty of carriers to make reasonable regulations affecting transportation facilities,—so long as there is no conflict be-

tween such enactment and the regulations of the Interstate Commerce Commission. *Gulf, etc., R. Co. v. Texas*, (1918) 246 U. S. 58, 38 S. Ct. 236, 62 U. S. (L. ed.) —, *affirming*. (Tex. Civ. App. 1914) 169 S. W. 385.

Limitation of liability as to telegraph messages.—This statute, classifying telegraph messages as repeated and unrepeated, expressly authorizes a telegraph company to transmit an unrepeated message and impliedly authorizes such company to limit its obligation and liability for negligence growing out of the sending of such a message. *Western Union Tel. Co. v. Dant*, (1914) 42 App. Cas. (D. C.) 398, Ann. Cas. 1916A 1132; *Bailey v. Western Union, etc., Co.*, (1916) 97 Kan. 619, 156 Pac. 716; *Western Union, etc., Co. v. Spencer*, (Okla. 1916) 156 Pac. 1175; *Western Union, etc., Co. v. Orr*, (Okla. 1916) 158 Pac. 1139. See further to the same effect *Boyce v. Western Union Tel. Co.*, (1916) 119 Va. 14, 89 S. E. 106, wherein the court held that a stipulation limiting a telegraph company's liability on an unrepeated message to the amount received for sending it was reasonable, valid and enforceable.

1912 Supp., p. 113, sec. 7.

[*Classification of property, etc.*]

Persons excepted from anti-pass provisions—*Persons riding on engine or tender.*—In *Illinois Cent. R. Co. v. Messina*, (1916) 240 U. S. 395, 36 S. Ct. 368, 60 U. S. (L. ed.) 709, *reversing* (1915) 109 Miss 143, 67 S. 933, the court declined to limit the anti-pass provision to the use of interstate free ticket, free pass or free transportation issued by the common carrier, but held that where a person who paid no fare was upon the tender of an engine, by permission of the engineer in charge of the train, he was within the Act. The court said: "We cannot think that if a prominent merchant or official should board a train and by assumption and an air of importance should obtain free carriage, he would escape the Act."

In *Spencer v. Chicago, etc., R. Co.*, (1915) 161 Wis. 474, 154 N. W. 979, the court, limiting its decision to the precise situation involved, enunciated the principle, in view of this section making it unlawful to ride free, that "if a person enters the cab of a railway locomotive for the purpose of obtaining a free ride, and there is no objection made by the engineer—in view of the law prohibiting such free passage and the place being, by common knowledge, for the exclusive use of the engine crew—such person is presumed to know that the engineer has neither actual nor apparent authority to permit him to do so, and to wilfully

commit an unlawful act, and he thereby makes himself a trespasser."

Caretakers of live stock.—As this paragraph of the Act especially excepts from the anti-pass provisions of the law "necessary caretakers of live stock" and this provision is not varied or affected by subsequent amendments, a release by a caretaker of live stock to the railroads over which he was to travel from any liability for personal injuries sustained through the railroad's negligence was held to be invalid on the ground that, prior to the Hepburn Act, such caretaker would not have been a gratuitous passenger for the reason that the right to ride without special compensation was given in part consideration of the payment which was principally for other services, which made him a passenger for hire and entitled to protection as such, as incidental to the carriage of the stock under his care, and Congress, by the Hepburn Act, by reason of the special exception, has not regulated the validity of such a release to the exclusion of the law of the state. *Wiley v. Grand Trunk Ry. of Canada*, (W. D. N. Y. 1915) 227 Fed. 127.

Injuries received while riding on free passes—Limitation of liability.—As a general rule, a stipulation in a free pass given by a carrier to the effect that the person who accepts it assumes all risks of injury in transportation is enforceable; and as to a passenger who has accepted transportation under such a pass a carrier is liable only for injuries resulting from wantonness or wilful negligence. *Wright v. Central of Georgia R. Co.*, (1916) 18 Ga. App. 290, 89 S. E. 457, following *Charleston, etc., R. Co. v. Thompson*, (1914) 234 U. S. 576, 34 S. Ct. 964, 58 U. S. (L. ed.) 1476.

In *Turman v. Seaboard Air Line R. Co.*, (1916) 105 N. C. 287, 89 S. E. 655, it was held that the provisions of a pass which undertook to save the corporation from liability under any circumstances, whether of negligence of agents or otherwise, would not be held to include wilful and intended wrongful acts of its servants, as the allowance of such a contract would militate against good order and be against public policy.

If a contract between a railroad company and an express company provides that the latter's messenger shall render service to the railroad company, and in consideration thereof receive a sum of money and also two passes a month for use of his family, such a pass is a "free pass," in the sense intended by the Hepburn Act, and a clause printed on the pass, whereby the passenger undertakes to assume all risks, is binding on the party using it. *Morris v. West Jersey, etc., R. Co.*, (1915) 87 N. J. L. 579, 94 Atl. 593.

Contracts for issuance of free passes.—Where an owner granted a railroad right of way through his lands for a valuable consideration expressed in the deed, and a carrier engaged in interstate commerce orally agreed that, as part of the consideration, not so expressed, it would issue to him annually for life a pass over its road, and the agreement therefor, though valid at the time, was afterward prohibited by this enactment, it was held that the carrier's failure or refusal to issue the pass, because so prohibited, would not entitle the grantor to a decree for specific performance of the oral agreement, or for rescission of the grant, neither the agreement nor the grant providing for either remedy in the event of such failure or refusal. *Dorr v. Chesapeake, etc., R. Co.*, (1916) 78 W. Va. 150, 88 S. E. 666, L. R. A. 1916E 622.

1912 Supp., p. 115, sec. 8.

Application under first proviso.—Whether an application by the carrier is a prerequisite to the granting of relief, may be doubted. *U. S. v. Merchants', etc., Traffic Ass'n*, (1916) 242 U. S. 178, 37 S. Ct. 24, 61 U. S. (L. ed.) 233, reversing (N. D. Cal. 1915) 231 Fed. 292.

It is within the power or discretion of the Commission to prescribe the extent or the degree to which a common carrier may be relieved from the operation of this section. *U. S. v. Merchants', etc., Traffic Ass'n*, (1916) 242 U. S. 178, 37 S. Ct. 24, reversing (N. D. Cal. 1915) 231 Fed. 292.

Hearing.—The requirement of this section empowering the Commission to authorize a carrier to charge less for a longer than a shorter haul "after investigation" clearly implies that the question shall be determined upon testimony after a hearing. *Louisville, etc., R. Co. v. U. S.*, (W. D. Ky. 1915) 225 Fed. 571.

Burden of proof.—Upon an application to the Commission by a carrier to be relieved from the operation of the long and short haul provision of this section, the burden of proof is plainly cast upon the applicant. *Louisville, etc., R. Co. v. U. S.*, (W. D. Ky. 1915) 225 Fed. 571.

For evidence held sufficient to support an order of the Commission denying an application for relief from the operation of the long and short haul clause of this section, see *Louisville, etc., R. Co. v. U. S.*, (1918) 245 U. S. 463, 38 S. Ct. 141, 62 U. S. (L. ed.) —, affirming (W. D. Ky. 1915) 225 Fed. 571.

1912 Supp., p. 117, sec. 10.

State statute.—The first paragraph relates specifically to and provides for only such conduct as is the result of deliberation and intention, and does not

relate to mere neglect in individual cases provided against by a state statute providing a penalty for the failure of a telegraph company to deliver a telegram "with impartiality and in good faith, and in the order of time in which they are received." *Western Union Tel. Co. v. Boegli*, (Ind. 1917) 115 N. E. 773.

The last paragraph is not designed especially to protect the property rights of the carrier, for the offense is made equally punishable whether committed with or without the consent or connivance of the carrier. *U. S. v. Union Mfg. Co.*, (1916) 240 U. S. 605, 36 S. Ct. 420, 60 U. S. (L. ed.) 822.

Obtaining transportation at less than regular rate.—In denouncing as criminal "false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement or other device or means" employed in order to "obtain or attempt to obtain transportation for such property at less than the regular rates established," the lawmaker regarded not merely the physical transportation of the property but the entire transportation through which consignor or consignee might seek to evade the policy of the Act to subject all interstate shipments to uniform rates of charge prescribed in published tariffs. In a case where for any reason the payment of the freight is not made prior to the delivery of the goods to the consignee but remains to be afterwards adjusted, the effort to obtain an advantage not permitted by the schedules may still be exerted through fraudulent representations influencing the adjustment of the freight, with precisely the same effect as if the representations had preceded delivery of the goods. When this is accomplished, there is a fraudulent obtaining of transportation at less than the established rate, within the meaning of the prohibition. *U. S. v. Union Mfg. Co.*, (1916) 240 U. S. 605, 36 S. Ct. 420, 60 U. S. (L. ed.) 822.

Venue.—An offense against the consignee for fraud in the liquidation of the amount payable for freight at its destination should be prosecuted in the district where the goods were delivered by the carrier and not in that where they were received for transportation. *U. S. v. Union Mfg. Co.*, (1916) 240 U. S. 605, 36 S. Ct. 420, 60 U. S. (L. ed.) 822.

1912 Supp., p. 118, sec. 11.

Scope of power of commission.—In *Philadelphia, etc., R. Co. v. U. S.*, (E. D. Pa. 1915) 219 Fed. 988, wherein the plaintiff sought by a bill in equity to annul an order of the Interstate Commerce Commission, the question before the court was whether the commission had the power to find discrimination against one locality in a proceeding insti-

tuted upon complaint, charging discrimination against another locality. That it had such power, basing its decision upon a related circumstance of the case, and upon the purpose for which the commission was created and the mischief which it was intended to remedy. But in *Philadelphia, etc., R. Co. v. U. S.*, (1916) 240 U. S. 334, 36 S. Ct. 354, 60 U. S. (L. ed.) 675, the Supreme Court, without derogation to the view of the power of the Commission enunciated by the District Court as above, reversed its decree, on the ground that the facts as ascertained afforded no foundation for the Commission's findings.

The Interstate Commerce Commission has power to make an order requiring trunk line railway companies to reopen through routes and publish joint rates to interstate destinations with tap lines with which such trunk lines have a connection, and to prohibit any of the line carriers from making to any of the tap lines allowance or division out of the joint rates in excess of prescribed maximum amounts. *O'Keefe v. U. S.*, (1916) 240 U. S. 294, 36 S. Ct. 313, 60 U. S. (L. ed.) 651. See further, *Tap Line Cases*, (1914) 234 U. S. 1, 34 S. Ct. 741, 58 U. S. (L. ed.) 1185, wherein the order establishing maximum allowances to and divisions of joint rates, with tap lines by trunk lines, referred to in the foregoing note, was made.

1912 Supp., p. 119, sec. 12.

[Violations, etc.]

Intrastate rates.—*In general.*—Congress could and did invest the Interstate Commerce Commission with authority to remove an existing discrimination against interstate commerce by directing a change of an intrastate rate prescribed by state authority. *American Express Co. v. Caldwell*, (1916) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1354, *modifying* decree in (*S. D. 1917*) 161 N. W. 132.

"Under the commerce clause of the Constitution Congress has ample power to prevent the common instrumentalities of interstate and intrastate commerce, such as the railroads, from being used in their intrastate operations in such manner as to affect injuriously traffic which is interstate. Where unjust discrimination against interstate commerce arises out of the relation of intrastate to interstate rates this power may be exerted to remove the discrimination, and this whether the intrastate rates are maintained under a local statute or by the voluntary act of the carrier. In correcting such discrimination Congress is not restricted to an adjustment or reduction of the interstate rates, but may prescribe a reasonable standard to which they shall conform and require the carrier to adjust the intrastate rates in such way as to

remove the discrimination; for where the interstate and intrastate transactions of carriers are so related that the effective regulation of one involves control of the other, it is Congress, and not the state, that is entitled to prescribe the dominant rule. It is admissible for Congress to provide for the execution of this power through a subordinate body such as the Interstate Commerce Commission, and this it has done by the Act to Regulate Commerce. Where, in the exercise of its delegated authority, the Commission not only finds that a disparity in the two classes of rates is resulting in unjust discrimination against interstate commerce, but also determines what are reasonable rates for the interstate traffic, and then directs the removal of the discrimination, the carrier not only is entitled to put in force the interstate rates found reasonable, but is free to remove the forbidden discrimination by bringing the intrastate rates to the same level." *Illinois Cent. R. Co. v. Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) —, following *Houston, etc., R. Co. v. U. S.*, (1913) 234 U. S. 342, 34 S. Ct. 833, 58 U. S. (L. ed.) 1341; *American Express Co. v. Caldwell*, (1916) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1354.

Disclosing information of shipments.—A state statute was held not to infringe the federal statute forbidding disclosure as to interstate shipments without the consent of the shipper which might be used to the shipper's disadvantage. In *Seaboard Air Line Ry. v. North Carolina*, (1917) 245 U. S. 298, 38 S. Ct. 96, 62 U. S. (L. ed.) — (*affirming* (1915) 169 N. C. 295, 84 S. E. 283), the court said: "The provisions of § 15, Act to Regulate Commerce, here relied on, were intended to apply to matters within the exclusive control of the Federal government; and when by a subsequent act Congress rendered interstate shipments of intoxicating liquors subject to state legislation, those provisions necessarily ceased to be paramount in respect of them."

Power of courts to regulate rates.—A federal District Court may not exercise administrative authority where the Commission has failed or refused to exercise it, nor annul orders of the Commission not amounting to an affirmative exercise of its powers. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

Review of order reducing rates on constitutional grounds.—Where the Commission, after full hearing, has set aside a given rate on the ground that it is unreasonably high, it should require a clear case to justify a court, upon evidence newly adduced but not in a proper sense newly discovered, in annulling the action of the Commission upon the ground that

the same rate is so unreasonably low as to deprive the carrier of its constitutional right of compensation. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

A party is not necessarily debarred from attacking on constitutional grounds an order of the Interstate Commerce Commission reducing railway rates, even though they were not taken at the hearing before that body, but correct practice,—especially since the amendment of the Act of June 29, 1906, to the Act of Feb. 4, 1887, §§ 14-16, by which the necessity of formal findings of fact, except in cases where damages or reparation are awarded, is dispensed with, and a greater effect than before is given to the orders of the Commission other than those requiring the payment of money,—requires that, so far as practicable, all the pertinent evidence shall be submitted in the first instance to the Commission, and that a suit to set aside or annul its order shall be resorted to only where the Commission acts in disregard of the rights of the parties. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

Whether a preference or advantage or discrimination is undue, unreasonable, or unjust, within the meaning of section 3, is one of those questions of fact that have been confided by Congress under sections 15 and 16, to the judgment and discretion of the Interstate Commerce Commission, and upon which the Commission's decisions, made the basis of administrative orders operating in futuro, are not to be disturbed by the courts, except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or, for some other reason, amount to an abuse of power. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

1912 Supp., p. 120, sec. 12.

[*New rates, etc.*]

Burden of proof.—The last sentence of section 15, by the fair import of its terms, imposes upon the carrier the burden of proving the new rate to be just and reasonable, only where that question is involved in the hearing, it does not call for proof as to matters not in controversy. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

Since Congress, by the amendment of 1910, specifically cast upon the carrier the burden of establishing the reasonableness of its rates when it appeared that such rates carried an increase over those which had prevailed previously, it would seem to follow that prior to the amendment the burden of proof was upon those objecting

to such increase in rates as unjustifiable. Otherwise there would have been no necessity for the enactment of the amendatory statute. *People v. Public Service Commission*, (1915) 215 N. Y. 241, 109 N. E. 252.

1912 Supp., p. 121, sec. 12.

[*Commission may establish through routes, etc.*]

Order fixing maximum for joint rates.—The Interstate Commerce Commission, when fixing by its order a maximum for joint rates, may, in its discretion, permit the carriers to make their own agreement, subject to review by the Commission, as to establishing joint rates within the maximum, and as to agreeing between themselves respecting divisions. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) —.

Finding by Commission.—The power to establish through routes and joint rates does not depend upon a finding by the Commission that the carriers in question have been guilty of discrimination. It is sufficient if discrimination in fact actually exists. *St. Louis, etc. R. Co. v. U. S.*, (W. D. Ky. 1916) 234 Fed. 668.

1912 Supp., p. 121, sec. 12.

[*Through routes, etc.*]

Through route and joint rates—Constitutionality.—In *St. Louis Southwestern R. Co. v. U. S.*, (1917) 245 U. S. 136, 38 S. Ct. 49, 62 U. S. (L. ed.) — (*affirming* [W. D. Ky. 1913] 234 Fed. 668), the court said: "That Congress has power to authorize the Commission to enter an order for through routes and joint rates, like that here complained of, has been heretofore assumed. No reason is shown for questioning the existence now."

Designation by the shipper in writing of the route by which the property shall be transported to its destination is not required by this section and is not essential to create a liability on the part of the carrier for moving the shipment by a different route from the one selected by the shipper and contrary to his oral instructions. *Lamb v. Moor*, (1916) 17 Ga. App. 549, 87 S. E. 837.

1912 Supp., p. 125, sec. 13.

[*Copies of schedules, etc.*]

Insufficiency or defective certification of tariff schedules on file with the Interstate Commerce Commission, which were admitted in evidence by the trial court, could not justify a state appellate court in arbitrarily disregarding such schedules when passing upon the question whether or not the carrier had limited its liability for the baggage of an interstate passenger to a specified sum unless a greater value

is declared and excess charges paid. *New York Cent., etc., R. Co. v. Beaham*, (1916) 242 U. S. 148, 37 S. Ct. 43, 61 U. S. (L. ed.) 210.

1912 Supp., p. 125, sec. 14.

[*Annual reports of statistics, etc.*]

Honest mistakes or omissions from report.—It is not the purpose of the law to punish honest mistakes, made in a genuinely doubtful case. The statute is a penal one and should be applied only to cases coming plainly within its terms. While the reports filed must be truthful reports, yet, since they must be made under oath, the penalties for perjury would seem to be the direct and sufficient sanction relied upon by the law-making power to secure their correctness. *U. S. v. Northern Pacific R. Co.*, (1916) 242 U. S. 190, 37 S. Ct. 22, 61 U. S. (L. ed.) 240, *affirming* (C. C. A. 8th Cir. 1914) 213 Fed. 162, 129 C. C. A. 514; *Elgin, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1915) 227 Fed. 411, 142 C. C. A. 107.

1914 Supp., p. 203, sec. 1.

The constitutionality of this Act was upheld in *Morris v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 516, 143 C. C. A. 584.

Goods stolen while in course of interstate commerce.—In *Friedman v. U. S.*, (C. C. A. 1st Cir. 1916) 223 Fed. 429, 147 C. C. A. 365, the indictment was laid under this section charging the plaintiff in error with unlawfully receiving and concealing certain brasses stolen from a box car at Springfield while constituting a part of a shipment from Concord, N. H., to Springfield, Mass. The merchandise belonged to the Boston and Maine Railroad, and was a part of its cars being forwarded to the repair shops of the railroad corporation. The claim was made that as this material was carried without compensation, and was all the time the property of the Boston and Maine Railroad, it was not within the statute. The court held that inasmuch as it was being transported as freight, it was within the letter of the statute. See further *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Indictment—Goods interstate commerce.—An indictment which charged the accused with knowingly, unlawfully and feloniously having in his possession distinct goods and chattels which had been stolen, taken and carried away from a named railroad station in Toledo, Ohio, while in course of shipment in interstate commerce between two points named in the counts, sufficiently charged that the goods were interstate commerce or a part thereof, that they retained their character as an interstate shipment of freight and

had not lost their character as such, as part of interstate commerce. *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Knowledge.—It is not necessary to aver that at the times the goods and chattels were alleged to have been in the possession of the accused, he knew they had been stolen from interstate commerce. *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Specific ownership.—An indictment charging an offense under this statute must allege specific ownership, but a special property, such as that for bailee, carrier, or the like, in goods stolen is sufficient for the purposes of an indictment. So an indictment which alleged the names of the consignees, sufficiently fixed the ownership of the goods, since in the absence of an agreement to the contrary, delivery to a common carrier is delivery to the consignee. *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Evidence.—Conviction of the offense of having in possession goods and chattels knowing them to have been stolen while in course of interstate commerce may be established upon circumstantial evidence. *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Jury question.—The question of the

guilt or innocence of one accused of receiving and having in his possession goods and chattels stolen in the course of interstate commerce, in violation of this section, is one for the jury. *Cuomo v. U. S.*, (C. C. A. 2d Cir. 1916) 231 Fed. 116, 145 C. C. A. 304.

Instructions.—In a prosecution under this statute for unlawfully having in possession goods and chattels with knowledge that they were stolen while in course of interstate commerce, a charge instructing the jury to find whether the goods and chattels in issue were articles of interstate transportation, whether they were stolen while in course of such transportation, whether the defendant came into possession of them, and if these findings were in the affirmative, then to find whether the defendant received the articles knowing them to have been stolen, was held to be erroneous, since such tests as these of guilty knowledge on the part of the accused subjected him to a standard of conduct and of capacity to detect crime which the jury might conclude to be the standard of reasonable and honest men of average intelligence when acting under circumstances like those which might be found to have existed in the instant case. *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

INTOXICATING LIQUORS

1914 Supp., p. 208. [Act of March 1, 1913.]

Constitutionality.—This Act is constitutional. *James Clark Distilling Co. v. Western Maryland R. Co.*, (1916) 242 U. S. 311, 37 S. Ct. 180, 61 U. S. (L. ed.) —, Ann. Cas. 1917B 845, L. R. A. 1917B 1218; *State v. Little*, (1916) 171 N. C. 805, 88 S. E. 723; *Gottstein v. Lester*, (1915) 88 Wash. 462, 153 Pac. 595.

“Law of such state” includes a city ordinance. *Kansas City v. Jordan*, (1917) 99 Kan. 814, 163 Pac. 188, Ann. Cas. 1918B 273.

Shipments of liquor through a state from a place without the state cannot be seized under a state statute by virtue of the Webb-Kenyon Act. *State v. Great Northern R. Co.*, (1917) 98 Wash. 197, 167 Pac. 103.

Pen. Code § 238, how affected.—The Webb-Kenyon Act does not repeal, or suspend the provisions of Pen. Code, § 238 (see 1909 Supp., p. 472), which denounces under penalty of a fine or imprisonment the offense of the delivery by

an agent or employee of an express company, or other common carrier to any fictitious person, or to any person under a fictitious name, of any intoxicating liquor shipped in interstate commerce. *Witte v. Shelton*, (C. C. A. 8th Cir. 1917) 240 Fed. 265, 153 C. C. A. 191.

Liquors purchased for personal use are not invalidated by the Webb-Kenyon Act when not prohibited by the law of the state where the purchaser lives. *Sturgeon v. State*, (1916) 17 Ariz. 513, 154 Pac. 1050; *Adams Express Co. v. Com.*, (1913) 154 Ky. 462, 157 S. W. 908, 48 L. R. A. (N. S.) 342; *West Virginia v. Adams Express Co.*, (S. D. W. Va. 1914) 219 Fed. 331; *Com. v. White*, (1915) 166 Ky. 528, 179 S. W. 469; *Palmer v. Southern Express Co.*, (1914) 129 Tenn. 116, 165 S. W. 236.

But a state law which prohibits the delivery of liquors for personal use of the consignee, or limits the amount that may be delivered to a consignee for such use, is valid under the Webb-Kenyon Act. *James Clark Distilling Co. v. Western Maryland R. Co.*, (1916) 242 U. S. 311, 37 S. Ct. 180, 61 U. S. (L. ed.) 326,

Ann. Cas. 1917B 845, L. R. A. 1917B 1218, 35 S. Ct. 824, 59 U. S. (L. ed.) 1267, Ann. Cas. 1915D 1167, L. R. A. 1916C 273, *distinguishing* Adams Express Co. v. Kentucky, 238 U. S. 190, *reversing* (1914) 160 Ky. 66, 169 S. W. 603; *Gaines v. Baltimore, etc., Steamship Co.*, (E. D. S. C. 1916) 234 Fed. 786; *Theo-Hamm Brewing Co. v. Chicago, etc., R. Co.*, (C. C. A. 7th Cir. 1917) 243 Fed. 143, 156 C. C. A. 9, *reversing* (N. D. Ga. 1915) 215 Fed. 672; *State v. Southern Express Co.*, (1917) 173 N. C. 753, 91 S. E. 706; *Brennen v. Southern Express Co.*, (1916) 106 S. C. 102, 90 S. E. 402.

A state statute which makes it unlawful to receive more than one quart of intoxicating liquors within fifteen days is a legitimate exercise of police power. *Glenn v. Southern Express Co.*, (1915) 170 N. C. 286, 87 S. E. 136. See to the same effect *Southern Express Co. v. Whittle*, (1915) 194 Ala. 406, 69 So. 652.

Sales by mail.—Where a state statute prohibited the sale of intoxicating liquors within four miles of a schoolhouse where school was kept, and it appeared that certain persons had received and possessed intoxicating liquors in Memphis, and were not only offering but were engaged in selling them at their place of business to purchasers residing in other states, directly or by money orders received through the mails, or by telegraph or telephone orders, it was held that such persons were not protected by the Federal Constitution and laws of Congress relating to interstate commerce. *Laughter v. McLain*, (W. D. Tenn. 1916) 229 Fed. 280.

In *State v. Davis*, (1915) 77 W. Va. 271, 87 S. E. 262, L. R. A. 1917C 639, it was held that where a liquor dealer residing and doing business in another state, who, by the agency of the United States mails, sends into West Virginia unsolicited, and there circulates or distributes to prospective customers price lists, circulars and order blanks, advertising his liquors for sale, and which he proposes to ship into the state to them, and which

advertising matter by such agency is actually delivered to a citizen of the state, he is guilty of a violation of the so-called "Yost Law" of West Virginia (Code 1913, ch. 32A, § 8), and may be indicted and punished as provided by said Act, and that that Act, by virtue of the Wilson Act and the Webb-Kenyon Act, does not infringe the commerce clause of the Federal Constitution.

State statute requiring marking of packages containing liquors.—A state statute requiring packages containing liquors to be conspicuously marked with the words "This Package Contains Intoxicating Liquor" is not authorized by the Webb-Kenyon Act. *Chicago, etc., R. Co. v. Giles*, (D. C. Colo. 1916) 235 Fed. 804. See *contra*, *State v. Owen*, (Wash. 1917) 166 Pac. 793.

A state statute requiring a permit to be attached to packages of liquor shipped into the state is warranted by the Webb-Kenyon Act. *State v. Warburton*, (1917) 97 Wash. 242, 166 Pac. 615; *State v. Great Northern R. Co.*, (1917) 97 Wash. 137, 165 Pac. 1073.

A state statute taxing an agency of a foreign brewery established in such state, if the tax does not operate as a discrimination, is a valid exercise of the police power of the state and a permissible regulation by the state of the sale of intoxicating liquors shipped from other states under the Wilson and Webb-Kenyon Laws. *Evansville Brewing Ass'n v. Excise Commission*, (N. D. Ala. 1915) 225 Fed. 204.

Record of shipments by railroad company.—A state law, providing that railroad companies shall keep a separate book, in which shall be entered the name of every person to whom intoxicating liquor is shipped, together with amount, kind, date of receipt, etc., to be followed by the consignee's signature acknowledging delivery, is not in conflict with this Act. *Seaboard Air Line R. Co. v. North Carolina*, (1917) 245 U. S. 298, 38 S. Ct. 96, 62 U. S. (L. ed.) —, *affirming* (1915) 169 N. C. 295, 84 S. E. 283.

JUDGMENTS

Vol. IV, p. 4, sec. 967.

Effect of state statutes.—The rights of the United States cannot be impaired by the lapse of time provided as a bar by the laws of the states. So in an action to enforce the lien of certain judgments by the United States, where a state statute provides that judgments directing the payment of money when duly docketed

shall be liens on real estate for the term of ten years and the period of limitation of actions on judgments is fixed by the state law at ten years from the date of rendition, it was held that the rights of the government were not to be impaired by the enforcement of such state statutes, although had the judgments been in favor of a citizen, by the terms of the federal statute, they would have ceased

to be liens at the expiration of the ten years fixed as the life of the lien by the state statute and of course no action could thereafter be maintained to enforce them as liens. The United States may take the benefit of any state or federal statute though it is not bound by its limitations. *U. S. v. Minor*, (C. C. A. 4th Cir. 1916) 235 Fed. 101, 148 C. C. A. 595. See also the same case in (W. D.

N. C. 1917) 243 Fed. 953. There the United States sought a bill in equity praying that lands be sold to satisfy the judgments mentioned above. The bill was dismissed on the ground that it was not a proper remedy, as the judgments were at law, and the United States had an adequate remedy at law by the issuance of fieri facias or execution.

JUDICIAL OFFICERS

Vol. IV, p. 79, sec. 19.

"United States commissioners are neither judges nor courts, although they sometimes act in a quasi judicial capacity and exercise the power of a court in so far as an act of congress has conferred specific authority or imposed the performance of a special duty." *U. S. v. Jones*, (N. D. N. Y. 1916) 230 Fed. 262.

Vol. IV, p. 90, sec. 824.

To constitute a final hearing a question must be submitted to the court, the disposition of which finally ends the case. An order of dismissal, without prejudice, before any testimony was taken, on the unopposed motion of libellant, did not authorize allowance of a docket fee of \$20 to the respondent's proctor. *Albion Lumber Co. v. Inter-Ocean Transp. Co.*, (N. D. Cal. 1917) 240 Fed. 1019.

Vol. IV, p. 95, sec. 828.

Making and certifying record on writ of error.—In the Circuit Court of Appeals it has been held that a certified transcript is not an original record but is a copy or transcription of the original record, and that the fee prescribed by the statute for compiling a certified copy of a record for use on appeal or writ of error, should be calculated at the rate of ten cents per folio for the part copied or transcribed and at the rate of fifteen cents per folio for the certificate. *U. S. v. Oliphant*, (C. C. A. 3d Cir. 1915) 230 Fed. 1, 144 C. C. A. 299.

Copies and transcripts.—In *naturalization proceedings*.—A clerk's charge of fees for making, on the direction of the Bureau of Immigration and Naturalization, triplicate copies of declarations of intention for naturalization, and attaching the seal of the court, was properly disallowed as incompatible with sections 12, 13, and in disregard of section 21 of the Naturalization Act of June 29, 1906, ch. 3592, 34 Stat. L. 596, 1909 Supp., p. 364, at pp. 371, 372, 374. *Cross v.*

U. S., (1916) 242 U. S. 4, 37 S. Ct. 5, 61 U. S. (L. ed.) 114.

Vol. IV, p. 107, sec. 829.

Summons and declaration.—In *Burroughs Bros. Mfg. Co. v. Dulaney*, (D. C. Md. 1916) 238 Fed. 255, where the marshal served on each of four defendants a writ of summons with a copy of the declaration attached, and charged in accordance with what appeared to have been the practice of the office for many years \$4 for the service on each person, on the theory that the two papers, to wit, the writ of summons and a copy of the declaration, constituted each a service of a separate writ, the court held that there could not be such a constructive separation of what was really one service, and that "a reasonable construction of the statute limits the marshal to one fee of \$2 for one service at one time in one cause on one person, no matter how many papers, copies, orders to show cause, etc., may be served by him on that one individual at the one time, and in the one cause."

On settlement of a claim in admiralty.—Where, on a libel against a yacht, the craft was taken into custody by the marshal pursuant to writ, but was afterward released upon the giving of a bond by the claimant to the marshal, the case was tried, and a final decree was entered for the libellant with costs, he was entitled to have taxed as part of his costs the poundage required to be paid to the marshal in case of settlement without a sale. *The Eros*, (E. D. N. Y. 1916) 245 Fed. 814.

Vol. IV, p. 155, sec. 771.

"To prosecute . . . all civil actions."—Where, on a bill filed by the United States to recover money on account of frauds against the internal revenue laws, a receiver was appointed pursuant to the prayer of the bill, and the receiver filed a bill to recover moneys of a corporation defendant which had been fraudulently

misappropriated and concealed, which was a purely ancillary or dependent proceeding, throughout which the United States was treated as the sole beneficiary, as in fact it turned out to be, and the district attorney and his assistant, who instituted the main suit and were appointed counsel for the receiver by the court, and though not directed by the Attorney General to appear in the receiver's suit, did so appear and throughout the litigation were recognized by the court, the receiver and the Department of Justice as representing the United States, it was deemed contrary to public policy to allow said attorney and his assistant, at least without the consent of the Attorney General, compensation for their services to the receiver, though paid by the defendants, under a compromise, and not out of the fund recovered. It was held that the receiver's ancillary suit was within R. S. sec. 771, which section is not limited to cases in which the United States is a party of record. "We think," said the court, "public policy as declared by the statutes and the decisions of the courts of the United States, opposed generally to the receipt by United States attorneys of private compensation for the performance of statutory duties," especially as criminal prosecutions in which said United States officers were actively connected were pending against some of the defendants. This conclusion was strengthened by consideration of the provision for salaries to United States attorneys in full for official services in the Act of May 28, 1896, ch. 252, §§ 6, 7, 29 Stat. L. 179, 180, vol. 4, Fed. Stat. Ann. 718, 722. *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

Revenue suits.—The United States attorney represents the United States in revenue fraud cases. *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

Vol. IV, p. 157, sec. 838.

It is the duty of United States attorneys to represent the United States in suits by the latter to recover money on account of frauds upon the internal revenue laws. *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

Vol. IV, p. 159, sec. 787.

Execution of process.—In *U. S. v. Mitchell*, (E. D. N. Y. 1915) 223 Fed. 805, it was held that a summons beginning an action at law in a federal Dis-

trict Court in New York, being directed to the defendants named and not to the marshal, in the form prescribed by the New York Code of Civil Procedure, § 418, could properly be served by a private person pursuant to authority given in section 425 of said Code.

1909 Supp., p. 283. [Act of June 30, 1906.]

Clerk of district attorney in grand jury room.—In *Latham v. U. S.*, (C. C. A. 5th Cir. 1915) 226 Fed. 420, 141 C. C. A. 250, L. R. A. 1916D 1118, where a clerk in the office of the district attorney and an adept stenographer, after having subscribed an oath before the clerk of the court to keep secret the proceedings of the grand jury, at the instance of the district attorney, was present in the grand jury room, and took stenographic notes of the testimony upon which an indictment was found, it was held that this was not an informality, but matter of substance, and ground for quashing the indictment, without the necessity of allegation or proof that the defendant was prejudiced by the presence of the stenographer.

Conviction of a bankrupt for fraudulent concealment of property was affirmed as against alleged impropriety or illegality in the fact that the attorney who represented the petitioning creditors, the receiver appointed by the court, and the trustee in bankruptcy aided, as a duly appointed special assistant United States district attorney, in the prosecution of the case, taking an active part in the trial, although not appearing before the grand jury, where there was no claim that such assistant was paid otherwise than by the government, nor was his conduct upon the trial criticized. And the fact that such counsel would have been disqualified from so acting, under the state law, was immaterial. *Terry v. U. S.*, (C. C. A. 1916) 235 Fed. 701, 149 C. C. A. 121.

Appointment.—"We do not think the Act of June 30, 1906, in conferring the power of appointment upon the Attorney General, should be construed to mean that the Attorney General must, in all cases, sign the appointment himself, but that the power of appointment is conferred upon the Attorney General as other powers are conferred to be exercised by him personally or through his lawful assistants when duly authorized for such purpose." *May v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 495, 149 C. C. A. 547.

JUDICIARY

Vol. IV, p. 220, sec. 563, par. eighth.

Saving of common-law remedy.—"Our conclusion is that an action in personam may be maintained for a tort committed on the high seas if the accident is attributable to the 'unseaworthiness' of the vessel; that the common-law courts of a state have jurisdiction concurrent with the federal courts when proceeding in personam; and that the state court will grant the relief that a common-law court would have granted had the case been originally triable in such court." *Larson v. Alaska Steamship Co.*, (1917) 96 Wash. 665, 165 Pac. 880, L. R. A. 1917F 671.

The clause of the federal Judiciary Act, saving to suitors of civil cases in admiralty and maritime jurisdiction a common-law remedy where the common law is competent to give it, leaves with the courts of Kentucky the jurisdiction to try cases for the negligence or wrongful killing of persons by collision of boats, such action being authorized by section 241 of the state constitution. *Monongahela River Consol. Coal, etc., Co. v. Lancaster*, (1916) 169 Ky. 24, 183 S. W. 258.

This is a saving clause; it is a saving from the admiralty and maritime jurisdiction, the exclusive cognizance of which is accorded to the District Courts. It is a saving to suitors in all cases where they have a common-law remedy and the common law is competent to give it; that is the common-law remedy. "It is not a remedy in the common-law courts which is saved but a common-law remedy." *Keithley v. North Pac., etc., Co.*, (D. C. Ore. 1916) 232 Fed. 255.

The remedy which is saved to a suitor by this section is not a remedy in the common-law courts but a common-law remedy, that is, the suitor who has a right of action growing out of a maritime contract may not go into a law court to find a new remedy, but he may employ a common-law forum, if one is found, competent to work out the right involved in his contract. *Berwind-White Coal Min. Co. v. Eastern Steamship Corp.*, (S. D. N. Y. 1916) 228 Fed. 726.

State Workmen's Compensation Law.—By amendment in the Act of Oct. 6, 1917, ch. 97, 40 Stat. L. 395, given *ante*, this volume, p. 401, "rights and remedies under the workmen's compensation law of any state" are saved to claimants. Prior to that amendment it was held that "the remedy which the [New York] Compensation Statute attempts to give is of a character wholly unknown to the com-

mon law, incapable of enforcement by the ordinary processes of any court, and is not saved to suitors from the grant of exclusive jurisdiction" in Judicial Code, § 256, par. Third, which re-enacts R. S. sec. 711, par. Third, vol. 4, p. 494. *Southern Pac. R. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451, four justices dissenting, *reversing* (1915) 215 N. Y. 514, 109 N. E. 600, Ann. Cas. 1916B-276, L. R. A. 1916A 403.

The ruling by the federal Supreme Court, as stated in the last preceding paragraph, was followed in *Hartman v. Toyo Kisen Kaisha Steamship Co.*, (N. D. Cal. 1917) 244 Fed. 567, holding that jurisdiction of an action for personal injuries by a barber employed by defendant on one of its liners, who was thrown down and injured while attempting to board the ship, did not rest exclusively with the California Industrial Commission, but was maintainable in the federal District Court; especially as it was held in *North Alaska Salmon Co. v. Pillsbury*, (1916) 174 Cal. 1, 162 Pac. 93, L. R. A. 1917E 642, that the California Workmen's Compensation Act did not cover claims arising upon injuries inflicted outside the territorial limits of the state, as were the injuries in the case in the District Court.

Contra.—In *Northern Pacific Steamship Co. v. Industrial Acc. Commission*, (1917) 174 Cal. 346, 163 Pac. 199, decided before the decision of the United States Supreme Court in *Southern Pac. Co. v. Jensen*, cited in the foregoing paragraphs, it was held that the state industrial accident commission had jurisdiction to make an award in the case of a seaman in the employ of the steamship company, who was injured while on his vessel, owned by citizens of the state, upon the high seas, and an award by the commission was affirmed as against the contention that the federal District Court in admiralty had exclusive jurisdiction.

Likewise, in *Lindstrom v. Mutual Steamship Co.*, (1916) 132 Minn. 328, 156 N. W. 669, it was held that the Minnesota Workmen's Compensation Law furnished the exclusive remedy for an employee of a fuel company injured by negligence of a steamship company while he was unloading a vessel on a ship on navigable waters within the territorial jurisdiction of the state.

And in another case it had been held that the jurisdiction peculiar to admiralty which cannot be exercised by the state courts is the jurisdiction to enforce maritime liens by proceedings in

rem. A suitor must pursue that remedy in the District Court of the United States, but he may if he choose resort to his common-law remedy by action against the master or owner of the vessel in any court, state or federal, having jurisdiction. *Walker v. Clyde Steamship Co.*, (1915) 215 N. Y. 529, 109 N. E. 604, Ann. Cas 1916B 87, *affirming* (1915) 167 App. Div. 945, 152 N. Y. S. 1147, wherein it was held that where an employee of a foreign railroad corporation, owning and operating a steamship engaged solely in interstate commerce, was accidentally injured on the steamship while it was lying alongside a pier in the Hudson river in the city of New York, he may sustain a claim under the Workmen's Compensation Act notwithstanding the fact that he may maintain an admiralty proceeding in rem for the same injury. While the remedy provided by the Workmen's Compensation Act is a substitute for the common-law remedy, it is in no sense a proceeding in rem to enforce a maritime lien and may, therefore, exist concurrently with the remedy in admiralty.

Action by seaman for damages for personal injuries.—In *Chelentis v. Luckenbach Steamship Co.*, (1918) 247 U. S. 372, 38 S. Ct. 13, 62 U. S. (L. ed.) —, the plaintiff was employed as fireman on board the defendant's steamship, and while performing his duties on the high seas sustained severe injuries from the alleged negligence and an improvident order of a superior officer, and sued therefor in a New York state court, demanding full indemnity for his damage, and the cause was duly removed to the federal court on the ground of diverse citizenship. On the trial he did not question seaworthiness of ship or her appliances and announced that no claim was made for maintenance, cure, or wages. At conclusion of plaintiff's evidence the court directed a verdict for defendant, and judgment thereon was affirmed by the Circuit Court of Appeals and by the Supreme Court on certiorari, the latter court holding that the work about which plaintiff was engaged was maritime in its nature; that his employment was a maritime contract; that the injuries received were likewise maritime; that the parties' rights and liabilities were matters clearly within the admiralty jurisdiction; that unless in some way there was imposed upon the owners a liability different from that prescribed by maritime law, plaintiff could properly demand only wages, maintenance, and cure; that under the doctrine approved in *Southern Pac. R. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451, no state has power to abolish the well recognized maritime

rule concerning measure of recovery, and substitute therefor the full indemnity rule of the common law, as such a substitution would distinctly and definitely change or add to the settled maritime law; that, under the clause of the federal statute "saving to suitors, in all cases the right of a common law remedy," etc., a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law, but does not reveal an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law; and that under the circumstances of the case, without regard to the court where plaintiff might ask relief, his rights were those recognized by the law of the sea notwithstanding section 20 of the Seamen's Act of March 4, 1915, ch. 153, 1916 Supp., p. 251, which provides that "in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow servants with those under their authority."

Waters and places.—A dry dock is part of the navigable waters and constitutes a place or locality which is subject to admiralty jurisdiction. *The Anglo-Patagonian*, (C. C. A. 4th Cir. 1916) 235 Fed. 92, 148 C. C. A. 586, *affirming* (E. D. Va. 1915) 228 Fed. 1014.

Property subject to admiralty jurisdiction.—The circumstance that a workman who was injured while repairing a vessel in a dry dock was taken in an unconscious condition, and therefore without his knowledge or assent from the dock where he was hurt, to a nearby hospital, where he died shortly afterward, cannot serve to defeat the jurisdiction of the admiralty court. *The Anglo-Patagonian*, (C. C. A. 4th Cir. 1916) 235 Fed. 92, 148 C. C. A. 586, *affirming* (E. D. Va. 1915) 228 Fed. 1014, *following* *Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft v. Gye*, (C. C. A. 5th Cir. 1913) 207 Fed. 247, 124 C. C. A. 517; *The Strabo*, (C. C. A. 2d Cir. 1900) 98 Fed. 998, 39 C. C. A. 375; *The Aurora*, (D. C. Ore. 1908) 163 Fed. 633.

In *Jolivet v. Seattle*, (W. D. Wash. 1915) 226 Fed. 963, the court said: "Where the municipality has control of the waters and of the buoys, and maintains supervision of the anchorage grounds, and issues permits for harbor privileges, and makes a charge therefor, it is liable for damage caused by negligence in the discharge of assumed duties," and held that a suit to recover such damages was one of admiralty cognizance.

Possessory suits.—In *The Nellie T.*, (C. C. A. 2d Cir. 1916) 235 Fed. 117, 148 C. C. A. 611, it was held that a

time charterer, owner pro hac vice, could maintain an action in admiralty against the owner for possession of the vessel.

A libel in rem against a foreign ship by a foreign subject for a tort committed on the high seas is within the admiralty jurisdiction of the District Court, nor is the ship immune on the ground that it has been requisitioned by the foreign government for the purpose of transporting military supplies, where the executive has not demanded the ship's release. *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

Vol. IV, p. 236, sec. 566.

Present rule stated.—At the present time a trial of issues of fact without a jury may be had in the District Court. The rule formerly obtaining that there was no statute in existence which provided for the trial in the District Court by the court without a jury, and that the provision for waiving a jury, in R. S. sec. 649, applies only to the Circuit Court, no longer obtains. This section is now construed in connection with section 291 of the Judicial Code. *Eastern Oil Co. v. Holcomb*, (C. C. A. 8th Cir. 1914) 212 Fed. 126, 128 C. C. A. 642. See to the same effect *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Admiralty — Joinder of parties.—Where a trial by jury is demanded under this section in a suit for damages brought by a good many passengers on a vessel, against the vessel for being served with unwholesome food, the libelants will not be allowed to join in one suit, owing to the perplexity and confusion which would attend a trial in which there was a large number of libelants. *The Rochester*, (W. D. N. Y. 1915) 227 Fed. 203.

Vol. IV, p. 246, sec. 629, par. fourth.

Suit to enjoin collection of illegal tax.—It is not open to question that a suit may not be brought to enjoin the assessment or collection of a tax because of the alleged unconstitutionality of the statute imposing it. To sustain jurisdiction there must be an allegation of grounds for equitable relief independent of the mere complaint that the tax is illegal and unconstitutional and should not be enforced. *Dodge v. Osborn*, (1916) 240 U. S. 118, 36 S. Ct. 275, 60 U. S. (L. ed.) 557.

Criminal prosecution.—Where an indictment charges a conspiracy to defraud the United States of internal revenue, a federal District Court has jurisdiction by virtue of the commission in its jurisdiction of overt acts, irrespective of the actual place of the formation of the con-

spiracy or of the presence in that jurisdiction of all of the conspirators. *Tillinghast v. Richards*, (D. C. R. I. 1916) 233 Fed. 710.

Vol. IV, p. 249, sec. 629, par. sixteenth.

Suit to restrain enforcement of unconstitutional law.—The federal court has jurisdiction of a suit brought against an officer of the state to restrain the enforcement of a law upon the ground that such law is in violation of the Constitution of the United States. *Crane v. Johnson*, (S. D. Cal. 1916) 233 Fed. 334, following *Truax v. Raich*, (1915) 239 U. S. 33, 36 S. Ct. 7, 60 U. S. (L. ed.) 131, L. R. A. 1916D 545, and *Raich v. Truax*, (D. C. Ariz. 1915) 219 Fed. 273.

Vol. IV, p. 258, sec. 641.

The action of jury commissioners, or other subordinate officers, excluding colored citizens from juries because of their race, does not authorize a removal from the state court where it does not appear that such officers so acted under or by virtue of the laws or constitution of the state. *Tillman v. State*, (1915) 121 Ark. 322, 181 S. W. 890.

Vol. IV, p. 265, sec. 1.

I. JURISDICTION OF CIRCUIT COURTS IN GENERAL (p. 267)

When jurisdiction once attaches, the court is bound to consider all issues properly presented, and thereafter render judgment and decree. Its duty to enforce its decrees is no less obligatory than its duty to render them. *Johnson v. Johnson*, (D. C. Nev. 1915) 225 Fed. 413.

Collateral attack.—Where a judicial tribunal has general jurisdiction of the subject matter, and the special facts which give it the right to act in a particular case are averred and not controverted upon notice to all the parties, jurisdiction is acquired and cannot be assailed in a collateral proceeding. When there is a total want of jurisdiction in the court, all its acts are void, but when there is merely a wrongful or defective execution of jurisdiction, its acts are voidable only, and must be reversed upon error. *Collins v. Williamson*, (C. C. A. 6th Cir. 1915) 229 Fed. 59, 143 C. C. A. 653.

II. SUITS OF A CIVIL NATURE AT COMMON LAW OR IN EQUITY (p. 267)

"Suit."—Where the assessor of a taxing district in an Iowa city assessed a party's property, and upon objections and after a hearing by the city board of review the valuation was reduced, and from this action of the board the assessor

prosecuted an appeal to the state District Court, as authorized by the state statute, the proceeding then became a "suit" and removable as such to the federal court on petition of the property owner. *In re Mississippi River Power Co.*, (S. D. Iowa 1917) 241 Fed. 194.

Judicial Code, § 28, 1912 Supp., p. 144, authorizes removal of a "suit . . . brought," etc. In *English v. Supreme Conclave*, (D. C. N. J. 1916) 235 Fed. 630, the court said: "The words of a statute regulative of a constitutional right are not to be given a narrower meaning than they bear, or the context demands. The particular words 'suit brought' should be so construed as to give them the full effect intended by the federal statute; i. e., the right of a defendant possessing the requisite qualification to remove into the federal court a proceeding instituted against him in a state court."

At law or in equity—In general.—Jurisdictions at law and in equity are as separate in the federal courts as if administered by different tribunals. *Forty Fort Coal Co. v. Kirkendall*, (M. D. Pa. 1915) 233 Fed. 704.

State legislation.—It has been held, however, that the remedies in equity afforded by state statutes may, with the proper parties and averments, be made available in the equity courts of the United States. *Jennings v. Smith*, (S. D. Ga. 1916) 232 Fed. 921.

In equity.—The general power of federal courts when sitting as courts of equity can be exerted only in cases otherwise within the jurisdiction of those courts by reason of diverse citizenship or other condition prescribed in Acts of Congress defining jurisdiction of federal courts. *Genesee Valley Trust Co. v. Kansas City, etc., R. Co.*, (D. C. Kan. 1917) 240 Fed. 524, remanding a removed equity suit.

Effect of state legislation in general.—The power of the federal courts was not granted by, and may not be revoked, impaired, or restricted by, any law or Act of a state. *Vitkins v. Clyde SS. Co.*, (1916) 232 Fed. 288.

The judicial power, authority and duty of the federal courts is wholly independent of state action. It cannot, directly or indirectly, be destroyed, abridged, limited or rendered less efficacious by any state statute, or by any exertion of state authority whatever. *Johnson v. Johnson*, (D. C. Nev. 1915) 225 Fed. 413.

Diversity of citizenship.—The jurisdiction of a federal court arising from diversity of citizenship of the parties cannot be impaired or annulled by a state statute. *Memphis St. R. Co. v. Bobo*, (C. C. A. 6th Cir. 1916) 232 Fed. 708, 146 C. C. A. 634.

Effect of state legislation concerning

right of removal—In general.—See *Courtney v. Pradt*, (1905) 196 U. S. 89, 25 S. Ct. 208, 49 U. S. (L. ed.) 398; *Harrison v. St. Louis, etc., R. Co.*, (1914) 232 U. S. 318, 34 S. Ct. 333, 58 U. S. (L. ed.) 621, L. R. A. 1915F 1187.

Restrictions of foreign corporations.—See *Security Mut. Life Ins. Co. v. Prewitt*, (1906) 202 U. S. 246, 26 S. Ct. 619, 50 U. S. (L. ed.) 1013, 6 Ann. Cas. 317, where the court cited *Home Ins. Co. v. Morse*, [1874] 20 Wall. 445, 22 U. S. (L. ed.) 365, and *Doyle v. Continental Ins. Co.*, [1877] 94 U. S. 535, 24 U. S. (L. ed.) 148, and distinguished *Barron v. Burnside*, [1887] 121 U. S. 186, 7 S. Ct. 931, 30 U. S. (L. ed.) 915; *Barrow Steamship Co. v. Kane*, [1892] 170 U. S. 100, 18 S. Ct. 526, 42 U. S. (L. ed.) 964, and *Blake v. McClung*, [1898] 172 U. S. 239, 19 S. Ct. 165, 43 U. S. (L. ed.) 432. But see *Harrison v. St. Louis, etc., R. Co.*, (1914) 232 U. S. 318, 34 S. Ct. 333, 58 U. S. (L. ed.) 621, L. R. A. 1915F 1187, referring to "the extremely narrow scope of the rulings in the *Doyle* and *Prewitt* cases," above cited, and rendering them inapplicable to that case. In *State v. Hodges*, (1914) 114 Ark. 155, 169 S. W. 942, L. R. A. 1916F 122, the Arkansas statute there pronounced constitutional was held to come "strictly within the narrow limits of the *Prewitt* case" above cited, which case was explained and distinguished in *Western Union Tel. Co. v. Kansas*, (1910) 216 U. S. 1, 30 S. Ct. 190, 54 U. S. (L. ed.) 355. See also *Harrison v. St. Louis, etc., R. Co.*, (1914) 232 U. S. 318, 34 S. Ct. 333, 58 U. S. (L. ed.) 621, L. R. A. 1915F 1187, *affirming* (W. D. Okla. 1909) 171 Fed. 480, *reaffirmed* in *Donald v. Philadelphia, etc., Coal, etc., Co.*, (1916) 241 U. S. 329, 36 S. Ct. 563, 60 U. S. (L. ed.) 1027; *Herndon v. Chicago, etc., R. Co.*, (1910) 218 U. S. 135, 30 S. Ct. 633, 54 U. S. (L. ed.) 970; *State v. Louisville, etc., R. Co.*, (1910) 97 Miss. 35, 51 So. 918, 53 So. 454, Ann. Cas. 1912C 1150, *reaffirmed* on second appeal (1913) 104 Miss. 413, 61 So. 425.

Proceedings relating to wills.—A suit which is, in an essential feature, a suit to annul a will, where such proceeding is by the laws of the state merely supplemental to the proceedings for probate and cognizable only by the Probate Court, is not within the jurisdiction of a federal court. *Sutton v. English*, (1918) 246 U. S. 199, 38 S. Ct. 254, 62 U. S. (L. ed.) —.

A proceeding to probate a will is not a suit at common law or in equity within the meaning of this clause. *Powell v. Watkins*, (N. C. 1916) 90 S. E. 207.

"In North Carolina, the proceeding for probate of a will is not regarded as an adversary suit *inter partes*, but is a proceeding *in rem*, in which the jurisdiction

of the court, in the exercise of probate powers, is exclusive, and an adjudication of probate may not be assailed or questioned in any collateral or independent proceedings," and therefore "a case concerning the probate of a will or an issue involved therein is not a removable cause within the meaning of the federal legislation on the subject." *Powell v. Watkins*, (N. C. 1916) 90 S. E. 207.

Settlement of estates.—Federal courts sitting in equity have no general jurisdiction in matters of probate and the administration of estates of decedents. And a federal District Court erred in taking jurisdiction of a suit by parties claiming an interest in a decedent's estate, on the ground of diverse citizenship, and appointing receivers of the estate of the decedent and in enjoining and directing the temporary administrators to surrender the assets in their hands to the receivers for administration in the federal court. *Smith v. Jennings*, (C. C. A. 5th Cir. 1915) 238 Fed. 48, 151 C. C. A. 124.

Where there is diversity of citizenship, the federal courts have equity jurisdiction to administer the assets of a deceased person within its jurisdiction. *Johnson v. Johnson*, (D. C. Nev. 1915) 225 Fed. 413, wherein the court said: "Until probate administration was regulated by statute and assigned to specific courts, it was a well recognized branch of chancery jurisdiction. At the time of the adoption of the Federal Constitution and the passage of the Judiciary Act, the Court of Chancery in England was the ordinary tribunal for such matters and it was with the powers then exercised by that court that the United States Circuit Court was invested."

A federal court has jurisdiction to determine the question whether or not a party is entitled to a share in the estate of a decedent in process of administration in a state Surrogate's Court, and to determine the limitation or extent of such share. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413, citing *Ingersoll v. Coram*, (1908) 211 U. S. 335, 29 S. Ct. 92, 53 U. S. (L. ed.) 208.

A federal court has jurisdiction of a bill in equity by citizens of a state to establish their claim as heirs and next of kin to the entire estate of a decedent, brought against citizens of another state making the same claim on their own behalf, permanent administrators, also citizens of the latter state, being joined as defendants. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

Mandamus proceedings.—Although a proceeding for a writ of mandamus pure and simple is not cognizable in the federal courts, it is otherwise where a proceeding, nominally for a writ of mandate as authorized by a state statute, is really a case where the powers of a court of

equity are invoked to compel the specific performance of a contract, and a proceeding of the latter description is removable to a federal court. *State v. Tacoma R., etc., Co.* (W. D. Wash. 1910) 244 Fed. 789.

The foregoing case was distinguished in State v. Puget Sound Traction, etc., Co., (W. D. Wash. 1917) 243 Fed. 748, where a proceeding for a writ of mandate to compel the defendant corporation to maintain and operate street railways pursuant to accepted ordinances of the city, was held not to be removable, although the plaintiff included a prayer for the appointment of a receiver, where there was an absence of allegation of facts upon which to found a receivership, and, as the court said, "the substance and effect of the entire record is mandamus."

III. AMOUNT IN CONTROVERSY (p. 272)

Increased to \$3,000 by Judicial Code.—In *McKernan v. North River Ins. Co.*, (E. D. Wash. 1912) 206 Fed. 984, it was held that, in view of section 299 of the Judicial Code, 1912 Supp., p. 252, the federal courts had jurisdiction of actions for less than \$3,000 if they were pending or had accrued before Jan. 1, 1912, the date the Code went into effect. But in *Sloane v. Kramer*, (E. D. N. C. 1916) 230 Fed. 727, the court held that the change in the jurisdictional value "of the matter in controversy" by section 24 of the Judicial Code, 1912 Supp., p. 139, from \$2,000 to \$3,000, applied to suits and actions instituted thereafter, without regard to the time the remedial right or cause of action accrued.

In what cases jurisdictional amount is necessary.—Where the action is brought on the ground of diversity of citizenship it is necessary that the matter in controversy exceed the sum or value of \$3,000, and that this shall appear by distinct averment upon the face of the bill, or otherwise from the proofs. *Pinel v. Pinel*, (1916) 240 U. S. 594, 36 S. Ct. 416, 60 U. S. (L. ed.) 817.

Where jurisdiction is invoked on the ground of a federal question involved, there must be the requisite amount in controversy. *Supreme Council, etc. v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11.

Absence of pecuniary value.—"It has long been settled that the jurisdiction conferred by Congress upon any court of the United States in a case where the matter in controversy exceeds a certain sum of money does not include cases where the rights of the parties are incapable of being valued in money, and therefore excludes habeas corpus cases." *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700.

How ascertained.—*Pleading amount by plaintiff.*—That the matter in contro-

versy exceeds the sum or value of three thousand dollars must appear by distinct averment from the face of the pleading or otherwise from the proof. *Pinel v. Pinel*, (1916) 240 U. S. 594, 36 S. Ct. 416, 60 U. S. (L. ed.) 817.

The plaintiff's pleading must show with reasonable certainty that the amount in controversy is within the jurisdiction of the court. *Brownson v. Emmet, etc., Counties*, (N. D. Ia. 1916) 237 Fed. 212, where the court intimated, on motion to dismiss, that the plaintiff's bill seeking recovery of damages and injunction by reason of flowage of 40 acres of his land was insufficient because there was no evidence "of the value of the land or the extent of such damage if any should occur, before the court except the allegations of the bill," and said that "if, upon the final hearing, the damage to the land was not shown to be in excess of that amount [\$3,000] the suit would have to be dismissed for want of jurisdiction."

In an action against an attorney for negligence, it was held that the test of the sufficiency of the declaration was whether its allegations, if proven, would make out a case. In other words, if proof of the facts alleged as to negligence and resulting loss would establish a cause of action within the jurisdictional amount. The fact that nominal damages might be recovered could not avail because upon that theory the amount involved would be insufficient to give the court jurisdiction. *Maryland Casualty Co. v. Price*, (C. C. A. 4th Cir. 1916) 231 Fed. 397, 145 C. C. A. 391, *affirming* (S. D. W. Va. 1915) 224 Fed. 271.

It is well established that the amount claimed in the complaint determines the jurisdiction of the national courts, unless it appears to a legal certainty from the face of the complaint that in no event can the plaintiff recover an amount necessary to give the court jurisdiction, and that as part of the claim necessary to make up the jurisdictional amount is as a matter of fact colorable and fictitious and inserted in bad faith to invoke the jurisdiction of the court. The fact that upon the trial the amount recovered is less than the sum necessary for the court's jurisdiction does not defeat it. *Le Roy v. Hartwick*, (E. D. Ark. 1916) 229 Fed. 857.

The mere statement of the amount of the claim in the ad damnum clause does not clothe the court with jurisdiction. The facts pleaded must sufficiently support the assertion of damages to suggest that the statement of the amount involved is either in good faith or is open to fair controversy. *American Sheet, etc., Co. v. Winzeler*, (N. D. Ohio 1915) 227 Fed. 321.

It is not absolutely necessary that the sum or value of the matter in dispute be

formally alleged. The amount may be otherwise shown. *Lee Line Steamers v. Robinson*, (C. C. A. 6th Cir. 1916) 232 Fed. 417, 146 C. C. A. 411.

Where a bill in equity alleges that the amount as to each plaintiff exceeds the jurisdictional amount of \$3,000, and in addition to the federal questions presented, shows diversity of citizenship and the bill is verified, and no counter affidavit is offered, a case of jurisdiction is thereby made out. *Lutz v. New Orleans*, (E. D. La. 1916) 235 Fed. 978.

Effect of counterclaim.—It has been held that when the jurisdictional amount is in question, the tendering of a counterclaim in an amount which in itself, or added to the amount claimed in the petition, makes up a sum equal to the amount necessary to the jurisdiction of a District Court, jurisdiction is established whatever may be the state of the plaintiff's complaint. *American Sheet, etc., Co. v. Winzeler*, (N. D. Ohio 1915) 227 Fed. 321.

Interest and costs.—Compensation of counsel, represented by an interest in the judgment to which he is entitled as his fee, is neither interest nor costs, and for jurisdictional purposes is to be treated as part of the matter in controversy. *Lee Line Steamers v. Robinson*, (C. C. A. 6th Cir. 1916) 232 Fed. 417, 146 C. C. A. 411.

Aggregate of claims.—In a suit by a state for the use and benefit of certain depositors in a state bank against a non-resident former bank commissioner and the nonresident surety on his bond, for losses alleged to have been suffered by each of the individuals named as the result of alleged neglect of official duty imposed by the state law upon the bank commissioner, the jurisdictional amount necessary for removal—if the case were removable at all—was held insufficient where none of the individual claims was large enough, though the aggregate of the claims was far in excess of the jurisdictional amount. *Title Guaranty, etc., Co. v. Idaho*, (1910) 240 U. S. 136, 36 S. Ct. 345, 60 U. S. (L. ed.) 566.

The principle upon which an aggregation of claims can be employed as a test of jurisdiction is that the persons joining in the suit must have a common and undivided interest, not distinct interests, in the amount involved; still this is not to say that, if the property involved is in truth separately owned and held, the parties may not constitute a class who may be joined for the sake of convenience and economy; it is to say that aggregation of their pecuniary interests is not permissible for making up the jurisdictional amount. *Nolen v. Reichman*, (W. D. Tenn. 1915) 225 Fed. 812.

Money and property rights.—Where the plaintiff in good faith claimed more than \$3,000 in a suit in equity for injunction

and accounting of profits, the court had jurisdiction regardless of whether the plaintiff actually recovered less than \$3,000 or nothing at all. *Garrett v. Ballard*, (C. C. A. 1916) 238 Fed. 335, 151 C. C. A. 335.

Suits for injunction.—In a suit in equity to enjoin the doing of certain specified acts, as the refusal to deliver a package of intoxicating liquor on the ground that it was forbidden to make delivery by the provisions of the state statute, it is very questionable whether in such a case a federal court will consider in estimating the value of the amount in controversy any exemplary or punitive damages. *Gaines v. Baltimore, etc., Steamship Co.*, (E. D. S. C. 1916) 234 Fed. 786.

In a suit by an employer against striking employees and their labor union to enjoin them from destroying or injuring plaintiff's property, where the alleged threatened damage far exceeded the jurisdictional amount, it was not necessary to give the court jurisdiction that \$3,000 worth of property should have been destroyed. *Tri-City Central Trades Council v. American Steel Foundries*, (C. C. A. 7th Cir. 1917) 238 Fed. 728, 151 C. C. A. 578.

The court had jurisdiction of a suit to enjoin a municipality from taking part of the plaintiff railroad company's right of way and depot grounds for street purposes, where it was possible that the amount awarded for the taking would exceed \$3,000. *Chicago, etc., R. Co. v. Lost Nation*, (S. D. Ia. 1916) 237 Fed. 709.

Damages for dissolution of partnership.—In *Kebart v. Aiken*, (1916) 232 Fed. 454, it appeared that the plaintiff, a citizen of New York, brought an action against the defendant, a citizen of Pennsylvania, to recover \$10,000 damages for the alleged wrongful termination of a written contract of copartnership between them. On the trial it appeared that the firm was insolvent and that the partnership had only ten days to run, when its assets were sold on an execution on a judgment obtained in the state court, for money due the defendant by the firm. On disclosure of these facts on plaintiff's proofs, the court below granted a compulsory nonsuit. This judgment was affirmed.

Administration of estates.—Where two children united in a suit to establish title, respectively, to an undivided one-eighth and an undivided two-eighths of certain real estate owned by a deceased father, on the ground of his omission to provide for them in his will, whereby, under a statute, they became entitled as if he had died intestate, the averment that one of the plaintiffs was entitled to an undivided one-eighth interest, and the other to an undivided two-eighths interest, making together an undivided three-

eighths interest in the property, "which said interests are of the value of \$4,500 and upwards over and above all incumbrances," was not the legal equivalent of saying that the interest of either plaintiff was of the value of more than \$3000; for "it is not necessarily to be inferred that the value of an undivided two-eighths is two-thirds of the value of an undivided three-eighths." *Pinel v. Pinel*, (1916) 240 U. S. 594, 36 S. Ct. 416, 60 U. S. (L. ed.) 817.

Proof.—A federal court of equity is not without jurisdiction to render a decree for an injunction against continuing trespasses, where threatened irreparable injury is alleged, by the mere fact that no proof has been made of the specific amount of that injury. *Moline Plow Co. v. Omaha Iron Store Co.*, (C. C. A. 8th Cir. 1916) 235 Fed. 519, 149 C. C. A. 65.

IV. SUITS ARISING UNDER THE CONSTITUTION, LAWS, OR TREATIES OF THE UNITED STATES (p. 280)

History of the provision.—*General jurisdiction first given in 1875.*—See *Bankers' Trust Co. v. Texas, etc., R. Co.*, (1916) 241 U. S. 295, 36 S. Ct. 569, 60 U. S. (L. ed.) 1010.

Constitutionality of provision.—"Under the Constitution Congress undoubtedly possesses power to invest the subordinate federal courts with original jurisdiction of all suits at law or in equity arising under the Constitution, laws or treaties of the United States." *Bankers' Trust Co. v. Texas, etc., R. Co.*, (1916) 241 U. S. 295, 36 S. Ct. 569, 60 U. S. (L. ed.) 1010.

Withdrawal of jurisdiction by Congress pending suit.—*Dismissal of suit.*—In *Hallowell v. Commons*, (1916) 239 U. S. 506, 36 S. Ct. 202, 60 U. S. (L. ed.) 409, the plaintiff brought a suit to establish the equitable title of an alleged heir of an Indian allottee dying intestate during the trust period. Pending the action Congress passed the Act of June 25, 1910, ch. 431 (in title INDIANS, 1912 Supp., p. 96), providing that in such cases the Secretary of the Interior should ascertain the legal heirs of the decedent and his decision should be final and conclusive. It was held that, even if there was jurisdiction when the suit was begun, the bill was properly dismissed after the passage of the Act of Congress above cited.

Diverse citizenship not essential.—If the cause of action, as stated in the plaintiff's pleading, arises under a federal statute, the federal court has jurisdiction, though the parties are citizens of the same state and federal district. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000.

Suit against state.—A suit by a foreign corporation against a state secretary of

state and attorney-general to enjoin the enforcement by them of state statutes imposing a permit tax and a franchise tax in violation of the Federal Constitution is not a suit against a state. *Looney v. Crane Co.*, (1917) 245 U. S. 178, 38 S. Ct. 85, 62 U. S. (L. ed.) —.

In *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, the court affirmed a decree, as within the jurisdiction of the District Court, enjoining state officers from taking action looking to the enforcement of certain state and local so-called franchise taxes assessed against public service corporations under state authority upon the ground of a discrimination in valuation of the intangible property upon which the taxes were based, arising out of systematic undervaluation of other taxable property.

In *Johnson v. Lankford*, (1918) 245 U. S. 541, 38 S. Ct. 203, 62 U. S. (L. ed.) —, the action was against a state bank commissioner and the surety on his bond to recover for alleged failure of the commissioner to perform his duty in consequence of which the plaintiff's deposit in a state bank was squandered, and also for arbitrarily and capriciously refusing, in violation of law and his bond, to pay plaintiff's claim as a valid claim against the guaranty fund of the state, which was available under the law of the state for payment of claims against the bank. It was held that the action was not one against the state in violation of the 11th Amendment, and that the federal District Court had jurisdiction on the ground of diverse citizenship.

The same conclusion was reached, namely, that the action was not against the state, where the plaintiff in an action against the same bank examiner and the surety on his bond was a stockholder in the bank as well as a depositor and sought to have his stockholder's liability of \$2,000 offset against any sums that might be owing to him by reason of the delinquencies of the said bank examiner. *Martin v. Lankford*, (1918) 245 U. S. 547, 38 S. Ct. 205, 62 U. S. (L. ed.) —, the court saying that the action was based upon the tortious conduct of the bank examiner, not in exertion of the state law, but in violation of it.

A suit against the members of a state public safety commission to enjoin them from enforcing an order of the commission on the ground that such order was not within the purview of the state statute defining the powers of the commission is not a suit against the state. *Cook v. Burnquist*, (D. C. Minn. 1917) 242 Fed. 321.

In *Weiland v. Pioneer Irrigation*, (C. C. A. 8th Cir. 1916) 238 Fed. 519, 151 C. C. A. 455, a suit against Colorado state officials who had duties to perform in ref-

erence to the distribution of water from the streams of the state for irrigation purposes, to restrain them from violating the state law by interfering with the plaintiff's right to divert water, was held not to be a suit against the state.

Must so appear from plaintiff's statement—*In general*.—"A case does" so arise where an appropriate statement of the plaintiff's cause of action, unaided by any anticipation or avoidance of defenses, discloses that it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of a law of Congress." *Hopkins v. Walker*, (1917) 244 U. S. 486, 37 S. Ct. 711, 61 U. S. (L. ed.) 1270.

Violation of the equal protection clause as a ground of jurisdiction was held to be sufficiently shown in a bill to enjoin state officers from taking action looking to the enforcement of certain state and local so-called franchise taxes assessed against public service corporations under state authority upon the ground of a discrimination in valuation of the intangible property upon which the taxes were based, arising out of systematic under-valuation of other taxable property. *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280.

Mere formal statement.—An allegation in a bill in equity that the cause of action was one arising under the Constitution and laws of the United States does not suffice, "since it is settled that a mere formal statement to that effect is not enough" to satisfy the rule of pleading. *Norton v. Whiteside*, (1915) 239 U. S. 144, 36 S. Ct. 97, 60 U. S. (L. ed.) 186.

In a suit by a holder of a "death benefit certificate" against a fraternal benefit society organized under the Massachusetts laws, asking for appointment of a receiver, alleging that the state statute forbidding such suit in any court of the state unless brought by the attorney-general deprived the plaintiff of the equal protection of the law, etc., it was held that no federal question was presented so as to give the court jurisdiction where the allegations in the plaintiff's bill complaining of the unconstitutionality of the statute did not constitute an essential part of the cause of action set forth and were in no way necessary thereto, and did not show that whether the remedy sought was obtainable or not depended upon the result of the constitutional question raised. *Supreme Council, etc. v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11.

Allegations without color of merit.—In *Weber v. Freed*, (1915) 239 U. S. 325, 36 S. Ct. 131, 60 U. S. (L. ed.) 308, Ann. Cas. 1916C 317, the plaintiff's bill sought to compel the collector of customs to permit the entry into the United

States of photographic films of a foreign prize fight, averring that the prohibition of such importation by the Act of Congress of July 31, 1912, ch. 263, § 1 (in title PRIZE FIGHTS, 1914 Supp., p. 326), was unconstitutional upon grounds stated in the bill. It was held that the bill was properly dismissed for want of jurisdiction.

Construction of federal statute—Indian homestead allotment.—In *Lancaster v. Kathleen Oil Co.*, (1916) 241 U. S. 551, 36 S. Ct. 711, 60 U. S. (L. ed.) 1161, plaintiffs alleged an oil and gas mining lease to them by the heirs of an Indian owner of a homestead allotment, which was recorded; that the defendant with full knowledge of plaintiff's lease obtained a subsequent lease from the same lessor covering the identical land, which was recorded and approved by the Secretary of the Interior, and had gone into possession and was operating under its lease; that the plaintiff's lease though not approved by the secretary was valid, and that the defendant's lease was void because, by the Act of May 27, 1908, ch. 199 (in title INDIANS, 1909 Supp., p. 232), the land of the allottee descended free from any restriction against leasing the same for oil and gas mining purposes, and because if that Act did impose restrictions as to such lease, it was void for repugnancy to the Federal Constitution; and the prayer of the bill was that the company be enjoined, etc., as hereinafter stated. It was held that the District Court erred in dismissing the cause for want of jurisdiction as a federal court.

Riparian rights in navigable waters.—In *Norton v. Whiteside*, (1915) 239 U. S. 144, 36 S. Ct. 97, 60 U. S. (L. ed.) 186, the plaintiff sued, from one point of view to quiet his title to a certain island which had emerged from the waters in front of his land on the Minnesota side of the upper corner of Lake Superior; or, in a broader aspect, to protect his asserted riparian rights in the submerged land in front of his shore property, the defendants being proprietors of land on the Wisconsin side, or of the whole part of the emerged island in the stretch of water between the two shores. The substance of the allegations in the bill and the relief prayed is stated in the opinion of the court, wherein it was held that no federal question was presented.

Statement of defense.—It is not enough that the plaintiff alleges some anticipated defense to his cause of action and asserts that the defense is invalidated by some provision of the Constitution of the United States. *Bronson v. Emmet*, etc., Counties, (N. D. Ia. 1916) 237 Fed. 212.

A federal question was not sufficiently presented in a bill by a railroad company against the lessee of its road for specific performance of a contract in the lease to

furnish free annual passes to the directors and officers of the lessor plaintiff, the bill alleging that the defendant claimed to be prevented from issuing such passes by virtue of provisions in the Interstate Commerce Acts of Congress. *Peterborough R. Co. v. Boston*, etc., R. Co., (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147, quoting from *Louisville*, etc., R. Co. v. Mottley, (1908) 211 U. S. 149, 152, 29 S. Ct. 42, 43, 53 U. S. (L. ed.) 126.

Suits arising under constitution.—A suit for injunction by a telephone company against a city wherein the company attacked an ordinance or resolution of the city requiring the company to remove its poles and wires from the streets as an impairment of the contract constituted by other ordinances, was a suit within the jurisdiction of the federal District Court. *Mitchell v. Dakota Cent. Telephone Co.*, (1918) 246 U. S. 396, 38 S. Ct. 396, 62 U. S. (L. ed.) —.

The federal District Court had jurisdiction of a bill to enjoin enforcement by a city of an ordinance which would cause irreparable injury to the plaintiff street railway company and impair the obligation of a prior contract with the city. *Cincinnati v. Cincinnati*, etc., Traction Co., (1918) 245 U. S. 446, 38 S. Ct. 153, 62 U. S. (L. ed.) —, citing *Detroit v. Detroit Citizens' St. R. Co.*, (1901) 184 U. S. 368, 22 S. Ct. 410, 46 U. S. (L. ed.) 592, and *Owensboro v. Cumberland Telephone, etc., Co.*, (1913) 230 U. S. 58, 33 S. Ct. 988, 57 U. S. (L. ed.) 1389.

Every action by an interstate carrier to recover freight is necessarily based on the Interstate Commerce Act, plus the ruling of the Interstate Commerce Commission in carrying out the same, and presents a federal question, since the rates are fixed by the Interstate Commerce Commission. *Wells v. Cuneo*, (S. D. N. Y. 1917) 241 Fed. 726.

Suit by or against federal corporation.—“As long ago as *Osborn v. U. S. Bank*, (1824) 9 Wheat. 738, 6 U. S. (L. ed.) 204, it was settled that a suit by or against a corporation chartered by an Act of Congress is one arising under a law of the United States.” *Bankers' Trust Co. v. Texas*, etc., R. Co., (1916) 241 U. S. 295, 305, 308, 36 S. Ct. 569, 60 U. S. (L. ed.) 1010, 1014, 1015.

Where plaintiff or defendant is a corporation created by an Act of Congress, except in the case of national banks, the suit is one arising under the laws of the United States. *Texas*, etc., R. Co. v. Bigger, (1915) 239 U. S. 330, 36 S. Ct. 127, 60 U. S. (L. ed.) 310, affirming (C. C. A. 5th Cir. 1914) 218 Fed. 990, 133 C. C. A. 673.

Suit against state corporation on bonds of federal corporation.—In *Male v. Atchison*, etc., R. Co., (1916) 240 U. S. 97, 36 S. Ct. 351, 60 U. S. (L. ed.) 544,

it was held that a suit in equity against a state corporation asserting liability of the defendant on certain bonds of a corporation created by an Act of Congress involves an inherently federal question, and is therefore within the original jurisdiction of the federal District Court within the reason of the rule that a suit by or against a federal corporation involves a federal question. The bonds were those of a federal railroad corporation, but the suit was brought before passage of the Act of Jan. 28, 1915, ch. 22, § 5, in 1916 Supp., p. 137.

A suit by or against federal railroad corporation is now an exception to the general rule that an action by or against a federal corporation arises under a law of the United States. See Act of Jan. 28, 1915, ch. 22, § 5, 1916 Supp., title JUDICIARY, p. 137.

Suits against officers of national banks.

—An action against directors in a national bank by a purchaser of its stock to recover damages for false reports of the bank's financial condition, upon which the plaintiff had relied, presents a federal question, since R. S. sec. 5239 in title NATIONAL BANKS, vol. V, p. 180, expressly authorizes recovery of such damages, and especially as it was held in *Yates v. Jones Nat. Bank*, (1907) 206 U. S. 158, 27 S. Ct. 638, 51 U. S. (L. ed.) 1002, and to like effect in *Thomas v. Taylor*, (1912) 224 U. S. 73, 32 S. Ct. 403, 56 U. S. (L. ed.) 673, and *Jones Nat. Bank v. Yates*, (1915) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788, that the rule expressed by that statute is exclusive and precludes a common-law liability for fraud and deceit. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000.

Action under federal Employers' Liability Act.—Where the allegations in a complaint by an administrator to recover for death of his intestate show that the deceased was employed in interstate commerce when injured, the case arises under a law of the United States, to wit, the federal Employers' Liability Act, 1909 Supp., p. 584. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

Suit arising under mining laws.—In *Hopkins v. Walker*, (1917) 244 U. S. 486, 37 S. Ct. 711, 61 U. S. (L. ed.) 1270, it was held that the bill in a suit to remove a cloud on the title of a placer mining claim stated a case of which the District Court had jurisdiction.

Suits relating to federal land laws.—*Title still in United States.*—The federal courts have no jurisdiction to quiet title to public land, the title to which is in the United States. The Land Department of the United States is a special tribunal with judicial functions, and has exclusive jurisdiction of issues affecting title to the public land until patent is

issued. *Reed v. St. Paul, etc., R. Co.*, (W. D. Wash. 1915) 234 Fed. 123.

Suits in relation to price discrimination.—The federal courts may exercise jurisdiction of suits brought to recover for price discriminations forbidden by the Clayton Act, Oct. 15, 1914, ch. 323 (1916 Supp., p. 267), although the Federal Trade Commission has not determined that there was such discrimination. *Frey v. Cudahy Packing Co.*, (D. C. Md. 1916) 232 Fed. 640, following *Pennsylvania R. Co. v. International Coal Min. Co.*, (1913) 230 U. S. 184, 33 S. Ct. 893, 57 U. S. (L. ed.) 1446, Ann. Cas. 1915A 315, wherein it was held that the federal courts had jurisdiction to award damages for the discrimination therein set up, although the Interstate Commerce Commission had not acted or been asked to act.

A bill in equity asserting a lien under the judgment of a federal court, and an intervening petition asserting title under a decree of a federal court, present federal questions. *Kansas City Southern R. Co. v. Guardian Trust Co.*, (1916) 240 U. S. 166, 35 S. Ct. 334, 60 U. S. (L. ed.) 579.

VI. DIVERSE CITIZENSHIP (p. 289)

State citizenship.—Where the plaintiff swore that some time before bringing the suit he had become a citizen of Maryland, and whether he had or had not depended upon the intention with which he had removed from Norfolk, Va., to Baltimore, and the District Court heard his testimony and was obviously satisfied with it, the Circuit Court of Appeals was also satisfied. *Garrett v. Mallard*, (C. C. A. 4th Cir. 1916) 238 Fed. 335, 151 C. C. A. 351.

A state is not a citizen.—A suit by a state suing as the real party plaintiff cannot be removed by a defendant on the ground of diverse citizenship. *Title Guarantee, etc., Co. v. Idaho*, (1916) 240 U. S. 136, 36 S. Ct. 345, 60 U. S. (L. ed.) 566.

An action in the name of a state to recover taxes is not removable on the ground of diverse citizenship. *Nevada-California Power Co. v. Hamilton*, (D. C. Nev. 1916) 235 Fed. 317. Thus it has been held that a suit by a state to recover taxes on property omitted from taxation, brought against nonresidents, is not removable to the federal court. *Darnell v. State*, (1910) 174 Ind. 143, 90 N. E. 769.

State a real or merely nominal party.—In an action by a state for the use and benefit of certain depositors in a state bank against a nonresident former bank commissioner and the nonresident surety on his bond for losses alleged to have been suffered by each of the individuals named as the result of alleged neglect of

official duty imposed by the state upon the bank commissioner, the question whether the state could be regarded as a merely nominal plaintiff in respect of the removability of the case on the ground of diverse citizenship, was mentioned but not discussed or determined by the Supreme Court, other questions being decisive. *Title Guaranty, etc., Co. v. Idaho*, (1916) 240 U. S. 136, 36 S. Ct. 345, 60 U. S. (L. ed.) 566.

Citizenship of corporation.—"The state in which a corporation is organized determines the citizenship whether it has offices and transacts business in the state in which the suit is sought to be brought or not. *Johanson v. Matson Treadwell Gold Min. Co.*, 225 Fed. 270." *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188.

"All the decisions and text-writers agree that, where one corporation is formed by the consolidation of two or more corporations, the consolidated corporation is a citizen of each state in which any one of the constituent companies was a citizen." *Case v. Atlanta, etc., R. Co.*, (W. D. S. C. 1915) 225 Fed. 862.

For jurisdictional purposes a corporation is to be regarded as a citizen of the state by whose laws it was created. *Peterborough R. Co. v. Boston, etc., R. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147.

A corporation is a mere creature of local law, incapable of having legal existence beyond the limits of the sovereignty creating it, and it must be treated as a citizen of the state creating it, within the meaning of that clause of the Constitution extending judicial power in federal courts to controversies between citizens of different states. *Thomas v. South Butte Min. Co.*, (C. C. A. 9th Cir. 1916) 230 Fed. 968; *Everett R., etc., Power Co. v. U. S.*, (W. D. Wash. 1916) 236 Fed. 806.

Incorporation under Act of Congress.—Diverse citizenship does not arise in the case of a suit by a citizen of a state against a railroad company incorporated under an Act of Congress. *Bankers' Trust Co. v. Texas, etc., R. Co.*, (1916) 241 U. S. 295, 36 S. Ct. 569, 60 U. S. (L. ed.) 1010.

Waiver.—Where the jurisdiction is based on diverse citizenship, and the only defect as to jurisdiction is simply as to the district in which suit is brought, the objection is waived, if the parties make up the issues without objecting to the jurisdiction of the court. *Collins v. Williamson*, (C. C. A. 6th Cir. 1915) 229 Fed. 59, 143 C. C. A. 653.

Consent of parties cannot confer jurisdiction. Hence where in a bill in equity all of the several plaintiffs, except one, and all of the several defendants were citizens of the state where the suit was

brought, a motion to dismiss for want of jurisdiction could properly be made by a defendant though he had answered to the merits. *Hastings v. Hoog*, (M. D. Pa. 1915) 234 Fed. 103.

Arrangement of parties as to adverse interests.—If an alignment of parties in an equity suit according to their interests makes community of citizenship between some of the plaintiffs and some of the defendants, the bill must be dismissed. *Hamer v. New York Rys. Co.*, (1917) 244 U. S. 266, 37 S. Ct. 511, 61 U. S. (L. ed.) 1125.

Where a minority stockholder in a corporation sued the majority stockholder and the corporation itself for an accounting of funds of the corporation alleged to have been misappropriated it was held that the corporation could not be aligned on the side of the plaintiff. *Baillie v. Backus*, (D. C. Ore. 1916) 230 Fed. 711.

In a suit by heirs to set aside a will and for partition of the estate, the interest of another heir who was also a legatee was adverse to the plaintiffs, and, being made a defendant, could not be aligned with the plaintiffs in determining the question of diversity of citizenship. *Sutton v. English*, (1918) 246 U. S. 199, 38 S. Ct. 254, 62 U. S. (L. ed.)

Proper, necessary or indispensable parties.—"In a determination of the jurisdiction of the national courts and the right to remove causes of action to them, indispensable parties only should be considered, because all others may be dismissed or disregarded, if their presence would oust or restrict the jurisdiction or the right." *Rogers v. Penobscot Min. Co.*, (C. C. A. 8th Cir. 1907) 154 Fed. 606, 83 C. C. A. 380, quoted and followed in *Webb v. Southern R. Co.*, (S. D. Ala. 1916) 235 Fed. 578, 584.

There are three classes of parties to a bill in equity. They are: 1. Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. *Minnesota v. Northern Securities*,

Co., (1902) 184 U. S. 199, 22 S. Ct. 308, 46 U. S. (L. ed.) 499, *followed in* Hawes v. Madison First Nat. Bank, (C. C. A. 8th Cir. 1915) 229 Fed. 51, 143 C. C. A. 645.

Where defendants brought into a suit in equity by amendment of the bill on the court's order were citizens of the same state as the plaintiff, but were not indispensable parties, the jurisdiction of the court was not ousted. *Weiland v. Pioneer Irrigation Co.*, (C. C. A. 8th Cir. 1916) 238 Fed. 519, 151 C. C. A. 225.

In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, where a Washington railroad corporation had constructed a tunnel in the city of Seattle and subsequently sold and conveyed to a foreign corporation all its properties and franchises, and had by reason of the statute of limitations ceased to be liable in damages for negligent construction and operation of said tunnel, it was not a necessary party to an action for the recovery of such damages against said foreign corporation, although the franchise and property thus conveyed were not relieved from liability.

All persons who have such an interest in the subject matter of a suit in a federal court as to render their presence necessary in order to make the final decree effectual are indispensable parties, and must be joined, although their citizenship is such as will oust the jurisdiction of the court. *Hawes v. Madison First Nat. Bank*, (C. C. A. 8th Cir. 1915) 229 Fed. 51, 143 C. C. A. 645.

Under the usual rule of the federal courts, if a case may be finally decided between the parties litigant without bringing others before the court, who would, generally speaking, be necessary parties, such parties may be dispensed with, if they are citizens of another state. This in no real sense conflicts with the principle that, if those not before the court have rights so closely related to the issues between the parties in court that a final decision cannot be made between them without affecting the rights of those not before the court, then the court may not dispense with such persons. *Ex p. Equitable Trust Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 571, 145 C. C. A. 457.

Representative parties—In general.—It is settled that the jurisdiction of the federal courts depends upon the personal citizenship of the parties to the record and not upon the citizenship of the parties whom they represent. *Memphis St. R. Co. v. Bobo*, (C. C. A. 6th Cir. 1916) 232 Fed. 708, 146 C. C. A. 63a.

An action by a trustee in bankruptcy brought in a state court to recover property fraudulently transferred by the bankrupt—an action authorized by section 70e of the Bankruptcy Act—may be removed to the federal court on the

ground of diverse citizenship. *Ewing v. Leszynsky*, (W. D. Wash. 1916) 236 Fed. 811, denying motion to remand.

Suit by foreign administrator.—In the absence of a state statute authorizing a foreign administrator to sue in its courts, a nonresident administrator cannot institute and maintain an action for damages on account of the death of his decedent by negligence against a resident individual or corporation on the ground of diverse citizenship. *Klug v. Martinsburg Power Co.*, (N. D. W. Va. 1916) 229 Fed. 861.

In holding that, on the face of a declaration in an action by a citizen of Arkansas in his representative capacity as administrator appointed by a Tennessee probate court against a Tennessee corporation, there was the requisite diversity of citizenship to give the federal District Court in Tennessee jurisdiction, the court accepted as conclusive a decision by the highest court of Tennessee that a Tennessee statute providing that certain nonresident executors and administrators shall be treated as citizens of Tennessee was to be construed, in connection with other statutes of the state, as enacted for the sole purpose of extending the privilege of suing in the state courts in forma pauperis, and consequently that the statute did not exclude nonresident executors or administrators from resort to federal courts under appropriate conditions.

Several parties plaintiff or defendant.—Where there are two or more joint plaintiffs and two or more defendants and suit is brought jointly, each of the plaintiffs must be capable of suing each of the defendants, in order to support the jurisdiction founded on diverse citizenship. *Hastings v. Hoag*, (M. D. Pa. 1915) 234 Fed. 103.

Where a party made a defendant to a bill in equity by voluntary intervention was a citizen of the same state with the plaintiffs, an application of the plaintiffs and said defendant to amend the bill by striking out the latter was granted against the other defendant's objection, there being no contention that the application was collusively made, and it appearing to the court that said defendant was not an indispensable, though a proper party. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

Where a bill was brought by citizens of Louisiana against citizens of Georgia, including permanent administrators of a decedent's estate, to have the plaintiffs declared next of kin and heirs entitled to the entire estate, alleging that several of the defendants claimed the entire estate adversely to the plaintiffs, another citizen of Louisiana, who was made a defendant and whose interest in the estate, if he had any, would be merely in common with the others whose rights rested

on the same ground with his, was held not to be an indispensable party; and, his citizenship being the same as the plaintiffs, he was stricken from the bill by amendment on his and their application. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

Pleading citizenship.—A corporation can be a citizen of only the state which created it and an allegation in a complaint that the defendant "is a corporation duly organized and existing under the laws of the State of New Jersey" in legal intentment, avers citizenship and is sufficient to confer jurisdiction on a federal court. *De Biasi v. Normandy Water Co.*, (D. C. N. J. 1915) 228 Fed. 234.

In *Peterborough R. Co. v. Boston, etc., R. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147, holding that the federal District Court in New Hampshire had no jurisdiction on the ground of diverse citizenship of a suit in which the plaintiff was alleged to be a New Hampshire corporation and a citizen of that state and the defendant was alleged to be a Massachusetts corporation and a citizen of that state, the court took judicial notice that the defendant was a public corporation organized and existing under the laws of New Hampshire, doing business in said state, and therefore a citizen thereof.

Jurisdictional question as issue of fact.—In *Kever v. Philadelphia, etc., Coal, etc., Co.*, (E. D. N. Y. 1916) 234 Fed. 814, the plaintiff demanding a trial by jury upon the question of citizenship, the court said: "While questions of jurisdiction may be disposed of upon motion, when they depend upon questions of law from facts appearing in the record, it would seem that either party should be entitled to demand a jury trial as to any issue which substantially goes to the merits of a cause of action, which must be tried by a jury, if either of the parties so demand. While, therefore, the question of citizenship might be a conclusion of law, if the facts are admitted or settled, nevertheless, in the present condition of the case, it would seem that the plaintiff has a right to insist that a plea of this nature be tried as one of the essential elements of the cause of action, as to which a jury trial is a matter of right."

Similarly, in *Lehigh Val. Coal Co. v. Washka*, (C. C. A. 2d Cir. 1916) 231 Fed. 42, 145 C. C. A. 230, it was stated "that if the defendant elects to plead the jurisdictional question, when this is raised for the first time upon the trial, the court should proceed to a determination of the facts from which the question of jurisdiction should be judged. If that question is decided against the defendant, or if he be held to have waived his right to object, the court may then proceed with the trial of the action upon the

merits. Thus the court may leave the issue on the merits to the jury, conditional upon the finding by the jury in favor of the plaintiff upon the jurisdictional question."

VII. SUITS BETWEEN CITIZENS AND ALIENS (p. 297)

Several parties plaintiffs and defendants.—The authorities are in conflict as to whether a federal court has jurisdiction of a case where citizens of a state are plaintiffs and citizens of a different state and aliens are defendants. It has been held that such a case would fall within the federal jurisdiction. *Bradshaw v. Bowden*, (W. D. Wash. 1914) 226 Fed. 323. See to the same effect *Ryan v. Ohmer*, (S. D. N. Y. 1916) 233 Fed. 165.

X. ANCILLARY PROCEEDINGS (p. 298)

Meaning of term.—"An ancillary bill or suit may, in a general way, be said to be a suit or proceeding in equity growing out of a prior suit in the same court, dependent upon, and instituted for the purpose either of impeaching or enforcing the judgment or decree in the prior suit, to the end that more complete justice may be done among all parties in interest; and the jurisdiction of such a suit is dependent upon the jurisdiction of the court of the prior suit." *Ferguson v. Omaha, etc., R. Co.*, (C. C. A. 8th Cir. 1915) 227 Fed. 513, 142 C. C. A. 145.

In federal court.—Where a plaintiff began several actions at law in a federal court against a guaranty company, all being cognizable in that court because arising under a law of the United States, and the guaranty company, conceiving that it had a partial equitable defense, not admissible at law, which was common to all the cases, and other partial defenses in particular cases, exhibited in that court a bill describing the actions at law, setting forth the defenses, showing that nothing was in controversy beyond the defenses, and praying that the entire matter be examined and adjudicated in a single proceeding in equity and further proceedings at law enjoined, this bill was properly framed as a dependent and ancillary bill and the court had jurisdiction to entertain it as such in virtue of the jurisdiction already acquired. *Eichel v. U. S. Fidelity, etc., Co.*, (1917) 245 U. S. 102, 38 S. Ct. 47, 62 U. S. (L. ed.) —.

A bill was not ancillary to foreclosure proceedings in which a decree had been entered and a sale had thereunder where to set up a wholly independent cause of action concerning which no reservation was made in the decree of foreclosure. *Hamer v. New York Rys. Co.*, (1917) 244 U. S. 266, 37 S. Ct. 511, 61 U. S. (L. ed.) 1125.

"The law is that the jurisdiction of the court as regards the principal suit cannot

be questioned in an ancillary proceeding or suit. . . . The rule is that neither the citizenship of the parties nor any other factor that would ordinarily determine jurisdiction has any bearing on the right of the court to entertain jurisdiction of an ancillary suit." *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

A federal court has jurisdiction of a suit ancillary or supplemental to a suit pending in such court, without regard to the citizenship of the parties, the amount in controversy, or the nature of the controversy. *Kirkland v. Knox*, (C. C. A. 4th Cir. 1916) 230 Fed. 806, 145 C. C. A. 116.

Appeal bonds.—"A suit on a bond given on appeal is not an original suit, but an outbranch of the suit in which the bond was given, and the jurisdiction of the original suit gives jurisdiction over the subject-matter of the suit on the bond." *American Surety Co. v. Shultz*, (C. C. A. 2d Cir. 1915) 223 Fed. 280, 138 C. C. A. 522.

Recovery of assets.—Where suit was brought to recover property claimed by the receivers as part of their trust estate, the possession of which was refused by the defendants, and the receivers were appointed by the federal court in which the suit was brought, and pursuant to its order, such suit was held to be auxiliary to the main action in which they had been appointed and the court had jurisdiction irrespective of the citizenship of the parties or the amount involved. *Kirkland v. Knox*, (C. C. A. 4th Cir. 1916) 230 Fed. 806, 145 C. C. A. 116.

A bill, by a purchaser at a foreclosure sale, filed in the same court as the original suit to foreclose the mortgage, for the purpose of determining the rights of third parties claiming to have acquired, during the pendency of the foreclosure suit, some right or interest in or to a portion of the premises included in the mortgages is ancillary to the main suit and one of which the court has jurisdiction. *Ferguson v. Omaha, etc., R. Co.*, (C. C. A. 8th Cir. 1915) 227 Fed. 513, 142 C. C. A. 145.

In state court.—A purely ancillary suit is not removable to a federal court apart from the original suit. *State v. Flannelly*, (1916) 96 Kan. 833, 154 Pac. 235.

XI. CRIMES AND OFFENSES (p. 299)

Nature of jurisdiction.—The District Court, which has jurisdiction of all crimes cognizable under the authority of the United States, acts equally within its jurisdiction whether it decides a man to be guilty or innocent under the criminal law, and whether its decision is right or wrong. An objection that the indictment does not charge a crime against the United States goes only to the merits of

the case. *Lamar v. U. S.*, (1916) 240 U. S. 60, 36 S. Ct. 255, 60 U. S. (L. ed.) 526.

Common-law offenses.—While it is well settled that there are no common-law offenses against the United States, it is also quite well settled by the decisions of the Court of Appeals of the District of Columbia that this does not apply to the District of Columbia. *Tyner v. U. S.*, (1904) 23 App. Cas. (D. C.) 324. See to the same effect *Harrison v. Moyer*, (N. D. Ga. 1915) 224 Fed. 224.

XII. PLACE OF BRINGING SUIT (p. 302)

The word "only" as used in this section must, it is held, be construed as synonymous with the word "alone," that is, "of or by itself," "without anything more," "exclusive," and, so considered, it would seem that, when it is sought to found jurisdiction on diversity of citizenship and also upon another jurisdictional fact, the case would not fall within this exception. *Memphis v. Board of Directors*, (W. D. Tenn. 1916) 228 Fed. 802.

"Diversity of citizenship alone would not suffice where neither plaintiffs nor defendants were residents or citizens of the state of the forum." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Where there is only one defendant and the jurisdiction depends on diversity of citizenship alone, the suit must be brought in either the district of the residence of the defendant or of the plaintiff, and not in the district where the defendant is found. *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 549.

Suits by and against aliens and foreign corporations.—An alien is not within the language and purpose of this section, and may be sued in any district in which he can be served with process. *Keating v. Pennsylvania Co.*, (N. D. Ohio, 1917) 245 Fed. 155.

An alien, although resident in a state, can maintain a suit against a citizen of the United States only in the district in which defendant resides or is an inhabitant. *Lehigh Val. Co. v. Washko*, (C. C. A. 2d Cir. 1916) 231 Fed. 42, 145 C. C. A. 230; *Kuzma v. Witherbee*, (E. D. N. Y. 1915) 232 Fed. 286; *Vitkus v. Clyde Steamship Co.*, (E. D. N. Y. 1916) 232 Fed. 288; *Lukosewicz v. Philadelphia, etc., Coal, etc., Co.*, (E. D. N. Y. 1916) 232 Fed. 292.

"While citizens of states may sue in the state of the citizenship of either plaintiff or defendant, aliens, though living in a state can sue only in the state of defendant's citizenship, and for the same reason a citizen may sue an alien wherever process can be served on him, though the alien lives, is resident, in another state than that of plaintiff or the court. So an alien, resident, in the sense of living, in Montana, cannot bring suit in this

court [in Montana] against a citizen of Idaho, though a citizen of Montana, residing in Idaho, can, all because citizenship, not residence controls." *Best v. Great Northern R. Co.*, (D. C. Mont. 1917) 243 Fed. 789.

Venue of action by an informer to recover a penalty given him by a federal statute is not governed by this section, but by R. S. sec. 732, now constituting Judicial Code, § 43, 1912 Supp. p. 152. *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

Contempt proceeding.—Upon examination of a proceeding for contempt for violation of an injunctive order, it was held in *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, that the proceeding was civil in nature, and not distinguishable in that behalf from *Gompers v. Bucks Stove, etc., Co.*, (1911) 221 U. S. 418, 31 S. Ct. 492, 55 S. (L. ed.) 797, 34 L. R. A. (N. S. 874, and that a federal District Court in Wisconsin had no authority to issue a writ directed to the marshal for the district of Massachusetts for the arrest of a person in the latter state and his removal to the Wisconsin district to answer for violation of an injunction.

Foreclosure proceedings.—A suit to foreclose a purchase-money mortgage may be brought in the district in which the land is located without regard to the citizenship of the parties. *Burke v. Mountain Timber Co.*, (W. D. Wash. 1915) 224 Fed. 591.

Waiver of objections.—Where a bill sufficiently alleged diversity of citizenship, but did not allege residence in the district where the suit was brought, an objection for absence of the residential allegations came too late when made for the first time after a full hearing on a motion for a preliminary injunction. *Great Lakes, etc., Transp. Co. v. Scranton Coal Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 603, 152 C. C. A. 437.

XIII. SUITS BY ASSIGNEES (p. 306)

History and purpose of the provision.—"This limitation on the jurisdiction of the United States courts has with some changes been in continuous force since the Judiciary Act of 1789. The history of this provision is set forth in the opinion of the Supreme Court of the United States in the case of *New Orleans v. Quinlan*, 173 U. S. 191, 19 S. Ct. 329, 43 L. Ed. 64; the three acts governing the matter before the enactment of the new Judicial Code being section 11 of the Judiciary Act of 1789, the act of March 3, 1875, and the act of March 3, 1887, as corrected by the act of August 13, 1888. The purpose of this provision of the law seems to have been twofold: First, to narrow the jurisdiction of the District Court, as granted in

the immediately preceding portion of the first subdivision of section 24 of the Judicial Code, over suits between citizens of different states and between citizens of a state and foreign states, citizens or subjects; and, second, to prevent the creation of jurisdiction in the District Courts by assignment made for the purpose of bringing about an apparent diversity of citizenship." *Baltimore Trust Co. v. Scriven County*, (S. D. Ga. 1916) 238 Fed. 834.

"The intent of the statute was to prevent citizens of the same state from creating a diversity of citizenship by assignment, and from thereby conferring upon the assignee by indirection a right to sue in the courts of the United States which otherwise he would not have possessed. *Lipschitz v. Napa Fruit Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 698, 139 C. C. A. 228.

A suit to recover the contents of a chose in action can only be maintained in a federal court where the assignor could have sued in that court if no assignment had been made. *Clear Lake Power, etc., Co. v. Craig*, (C. C. A. 9th Cir. 1915) 226 Fed. 598, 141 C. C. A. 354; *Brown v. Ketcher*, (C. C. A. 2d Cir. 1916) 231 Fed. 92, 145 C. C. A. 280.

Jurisdiction must appear on record.—"The decisions of this court have settled the following propositions . . . That the bill or other pleading must contain an averment showing that the suit could have been maintained by the assignor if no assignment had been made." *Kolze v. Hoadley*, (1906) 200 U. S. 76, 26 S. Ct. 220, 50 U. S. (L. ed.) 377.

In *Houck v. Bank of Brinkley*, (C. C. A. 8th Cir. 1917) 242 Fed. 881, 155 C. C. A. 469, reversing judgment for the plaintiff in a federal District Court in Missouri, and directing a dismissal for want of jurisdiction, the court, premising that the note in suit was payable to bearer under the law merchant and under the Negotiable Instruments Law of Missouri, said: "The note in question is payable to the order of the makers thereof, and is not a liability of such makers until it is negotiated or transferred by them."

Citizenship at time suit commenced.—Where the citizenship of an assignor of a chose in action is material, it has all been considered with reference to the time when the action is commenced. *Lips v. Napa Fruit Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 698, 139 C. C. A. 228.

Actual relation of parties controls.—A federal District Court in Georgia had jurisdiction of an action by Baltimore banks against a Georgia county and Georgia guarantors on notes made by the county to a Georgia bank, which transferred them to the plaintiffs, where it appeared that the payee was only a nominal party to the notes, with no beneficial interest

whatever in them, but merely acted as agent for the maker in negotiating the notes, and had no right of action on the notes. *Baltimore Trust Co. v. Screven County*, (S. D. Ga. 1916) 238 Fed. 834.

To what assignment or transfer applicable.—The federal court has jurisdiction of a suit against an alien by a citizen administrator of a citizen assignee of an alien. *Sands v. Carruthers*, (S. D. N. Y. 1917) 243 Fed. 636.

The term "chose in action."—The words of this section refer only to a cause of action based on contract. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413, citing *Kolze v. Hoadley*, (1906) 200 U. S. 76, 26 S. Ct. 220, 50 U. S. (L. ed.) 377, and *Shoecraft v. Bloxham*, (1888) 124 U. S. 730, 8 S. Ct. 686, 31 U. S. (L. ed.) 574.

This provision in the statute did not preclude a suit by the assignee of an oil and gas mining lease in Oklahoma against the landowners and a second lessee to restrain the latter from drilling the land for oil and gas and to cancel his lease as a cloud on the plaintiff's title, although the plaintiff and his immediate assignor were citizens of the same state, where the plaintiff was not seeking to enforce any executory contractual provisions of the lease, and was asserting no claim based upon either tort or breach of contract arising in favor of his assignor and assigned by him. *Shaffer v. Marks*, (E. D. Okla. 1917) 241 Fed. 139.

Whether a claim is a chose in action is a question of interpretation as applied to particular facts. *Clear Lake Power, etc., Co. v. Woodland Bank*, (N. D. Cal. 1914) 213 Fed. 109, affirmed (C. C. A. 9th Cir. 1915) 226 Fed. 698, 141 C. C. A. 454.

Deed to be considered mortgage as "chose in action."—In *Clear Lake Power, etc., Co. v. Capay Ditch Co.*, (C. C. A. 9th Cir. 1915) 226 Fed. 634, 141 C. C. A. 390, reversing (N. D. Cal. 1914) 213 Fed. 399, it appeared that the plaintiff had acquired by conveyance the title to land which its predecessor in interest had subjected to a lien by executing an instrument in form a deed but intended to be a mortgage. The mortgage lien had expired by limitation, but the deed constituted a cloud upon the plaintiff's title. The District Court held that the instrument was a chose in action, and an action to have it declared a mortgage fell within the terms of this section. But in reversal, the Circuit Court of Appeals held that in its essential features the cause of suit was one to quiet title to real estate and that the bill to redeem being based upon the effect imposed by a state statute upon the instrument executed by the complainant's predecessor in interest to the defendant, the suit was not based upon any chose in action and therefore did not fall within the

terms of this section. See also *Clear Lake Power, etc., Co. v. Stephens*, (C. C. A. 9th Cir. 1915) 226 Fed. 642, 141 C. C. A. 398; *Clear Lake Power, etc., Co. v. Adamson*, (C. C. A. 9th Cir. 1915) 226 Fed. 645, 141 C. C. A. 401.

A suit by the grantee of standing timber to prevent by injunction trespass and conversion of timber on the ground that it would result in irreparable injury for which there is not adequate remedy at law is not a suit by an assignor, etc., within this section. *Crown Orchard Co. v. Dennis*, (C. C. A. 4th Cir. 1915) 229 Fed. 652, 144 C. C. A. 62, distinguishing but following on the question of jurisdiction, *Ambler v. Epinger*, (1890) 137 U. S. 480, 11 S. Ct. 173, 34 U. S. (L. ed.) 765.

Share in a decedent's estate.—An assignment of a share amounting to a stated sum out of a supposed larger legacy is not within the language of this section, as a legacy establishes a beneficial and not a contractual claim. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413.

An action for money had and received was held not to be a suit to recover upon any promissory note, or other chose in action. *Manasha Wooden Ware Co. v. Southern Oregon Co.*, (C. C. A. 9th Cir. 1917) 244 Fed. 83, 156 C. C. A. 511, (C. C. A. 3d Cir. 1917) 244 Fed. 90, 156 C. C. A. 518.

Pleading citizenship of corporation.—Where it is alleged in the complaint in an action on a note, that it was given to a corporation "duly chartered, organized and existing under and by virtue of the laws" of a state other than that of the plaintiff's residence and the articles of incorporation, the due incorporation and existence of the corporation were admitted by stipulation, it is equivalent to an admission that the corporation was chartered and existed under the laws of that other state and was a citizen thereof. *Piedmont Carolina R. Co. v. Shaw*, (C. C. A. 4th Cir. 1915) 223 Fed. 973, 138 C. C. A. 227.

XIV. SERVICE OF PROCESS (p. 311)

The conformity Acts.—"It is settled law that jurisdiction cannot be acquired in an action begun in this court by the issue and levy of an attachment, but that personal service of process upon the defendant is indispensable." *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio 1917) 245 Fed. 200.

Jurisdiction by attachment.—In *Missouri Valley Bridge, etc., Co. v. Blake*, (C. C. A. 4th Cir. 1916) 231 Fed. 417, 145 C. C. A. 411, where jurisdiction of the state court was obtained over a nonresident defendant corporation only by attachment of its property pursuant to the state statute, it was held that the case was

properly removed by said defendant, the court saying: "We are of opinion that the state court had acquired jurisdiction by the levy under the attachment and the execution of the order of publication. This jurisdiction was not lost by removal to the federal court, although the latter court could not have acquired original jurisdiction by attachment and publication. *Craddock v. Fulton*, (N. D. W. Va. 1905) 140 Fed. 426; *Courtney v. Pradt*, [1905] 196 U. S. 89, 25 S. Ct. 208, 49 U. S. (L. ed.) 398."

Jurisdiction by substituted service.—In *Hudson Nav. Co. v. Murray*, (D. C. N. J. 1916) 236 Fed. 419, a bill was filed in the New Jersey Court of Chancery, and the defendant being a nonresident and not found in the state, the court made an order as authorized by the New Jersey statute directing the defendant to appear, plead, answer or demur within two months and providing for service upon him of notice of the pendency of the suit. The notice was duly served and the defendant removed the case to the federal court on the ground of diverse citizenship, in which court he specially appeared and moved to vacate the order for service made by the state court and the service itself. The court held that the order and service constituted due process of law and the defendant's motion was denied.

Privilege from service of civil process.—In *Stewart v. Ramsay*, (1916) 242 U. S. 128, 37 S. Ct. 44, 61 U. S. (L. ed.) 192, where jurisdiction of the federal District Court in Illinois was invoked on the ground of diverse citizenship, the defendant pleaded in abatement that he was a resident of Colorado and was served with process while in attendance upon the District Court as a witness in a case wherein he was plaintiff, and that the process was served while he was returning from the court room after testifying. Judgment sustaining this plea on demurrer thereto was affirmed.

On foreign corporation.—A federal District Court has no jurisdiction to enforce a personal liability, in the absence of consent, unless it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there. And even if it is doing business within the state, the process will be valid only if served upon some authorized agent; service of summons upon the president of a foreign corporation while he was passing through the state, engaged exclusively on personal matters unconnected with the company's affairs, was insufficient. *Philadelphia, etc., R. Co. v. McKibbin*, 243 U. S. 264, 37 S. Ct. 280, 61 U. S. (L. ed.) 710.

Service of process on a foreign corporation doing no business in the state by serving summons upon its president temporarily in the federal district and not engaged in the transaction of any business

for or on account of the corporation, was insufficient. *Meisukas v. Greenough Red Ash Coal Co.*, (1917) 244 U. S. 54, 37 S. Ct. 593, 61 U. S. (L. ed.) 987.

In *Toledo R., etc., Co. v. Hill*, (1917) 244 U. S. 49, 37 S. Ct. 591, 61 U. S. (L. ed.) 982, it was held, upon the facts there stated, that the foreign corporation defendant was not doing business in the state where the suit was brought, and service of process upon a director and vice-president residing in that state was insufficient to confer jurisdiction over it.

Service upon a sales agent of a corporation who resided in the Eastern District of New York, but who had his office in the Southern District was insufficient service upon the corporation to give jurisdiction to the federal court in the Eastern District, where the corporation made sales and deliveries of coal in the Eastern District, but had no regular place of business or representative in that district. *Harasimowicz v. Pennsylvania R. Co.*, (E. D. N. Y. 1916) 232 Fed. 295.

A sales agent of a foreign corporation, without discretionary powers, and acting under the direction and control of the home office, is not a managing agent within the meaning of a state statute authorizing service upon such agent. *American Oil, etc., Co. v. Western Gas Constr. Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 505, 152 C. C. A. 383.

"A service in an action at law on a foreign corporation in conformity to a state statute is good in the federal courts, unless the notice thus provided is not adequate according to the rules of due process of law." *Beach v. Kerr Turbine Co.*, (N. D. Ohio, 1917) 243 Fed. 706.

Who is "a managing agent" of a foreign corporation within the meaning of a state statute requiring service upon him in an action against such corporation, was discussed and on the facts of the case it was held that a valid service was made in that manner in *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706, holding also that the corporation was doing business in the state.

Vol. IV, p. 312, sec. 2.

Effect of state legislation concerning right of removal, see this subheading in notes to vol. IV, p. 265, § 1, *supra*, at p. 1252.

I. CASES INVOLVING FEDERAL QUESTION (p. 313)

Questions involved already settled.—In *Alabama, etc., R. Co. v. American Cotton Oil Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 11, 143 C. C. A. 313, holding a case removable as one based upon the Carmack amendment of the Interstate Commerce Act and therefore presenting a federal question, the court said: "It is insisted with apparent earnestness by the

appellee that no cause is removable where the law involved has once been decided, construed, and settled by the Supreme Court of the United States; and the Atlantic Coast Line R. Co. v. Riverside Mills, [1910] 219 U. S. 186, 31 S. Ct. 164, 55 U. S. (L. ed.) 167, 31 L. R. A. (N. S.) 7, is referred to as having construed and settled the Carmack Amendment. Since, however, the law relating to removal of causes because of a federal question is precisely the same as that upon which the original jurisdiction of the federal court because of such question depends, this contention, if meritorious, would seem to destroy the original jurisdiction and the right of removal as well."

Other questions involved.—Where a cause of action involving a federal question is united with a cause of action that is nonremovable, the entire case may be removed. *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio, 1917) 245 Fed. 788, 791.

Suit based on Carmack amendment.—A case in a state court based upon the Carmack Amendment of the Interstate Commerce Act was removable as presenting a federal question. *Alabama Great Southern R. Co. v. American Cotton Oil Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 11, 143 C. C. A. 313.

Case involving federal land laws.—See *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884.

Patent laws.—See *Charroin v. Romort Mfg. Co.*, (W. D. Wash. 1916) 236 Fed. 1011.

Action on federal Employers' Liability Act.—A federal question appears where the allegations in a complaint against an interstate railroad company to recover for personal injuries show that plaintiff was employed in interstate commerce when injured; and the action would be removable were it not for the proviso in Judicial Code, § 28, 1912 Supp., p. 144, forbidding removal of actions based on the federal Employers' Liability Act. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

A suit by a postmaster to enjoin a post office inspector from removing and delivering to any third party any of the property in plaintiff's possession as postmaster, alleging that the defendant claimed that the plaintiff had been removed and alleging that said removal was unlawful, was removable from a state court to the federal court, regardless of the amount in controversy. *Porter v. Coble*, (C. C. A. 8th Cir. 1917) 246 Fed. 244, 158 C. C. A. 404.

Joinder in petition for removal.—In *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884, the court expressed the opinion that where a suit involves a federal question

as to one alone of several defendants, it is not necessary that his codefendants shall unite with him in a petition for removal on that ground, in order to entitle him to a removal.

How federal question presented.—Whether a case is removable or not as one arising under the laws of the United States is to be determined by the allegations of plaintiff's complaint or petition, and if the case does not thus appear to be removable, it cannot be made removable by any statement in the petition for removal or in subsequent pleadings by the defendant. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

Whether a case is removable as one arising under the laws of the United States "depends upon the plaintiff's declaration." *American Well Works Co. v. Layne, etc., Co.*, (1916) 241 U. S. 257, 36 S. Ct. 585, 60 U. S. (L. ed.) 987.

"There can be no removal on such grounds unless they necessarily appear in the complaint, and that, too, unaided by anything alleged in anticipation or in avoidance of defenses which may be interposed." *Nevada-California Power Co. v. Hamilton*, (D. C. Nev. 1916) 235 Fed. 317.

"A federal defense has never been considered to be a cause for removal from a state court to a federal court. Whether a statute or law of the United States is involved in an action must be ascertained from the allegations contained in the declaration." *Smith v. Barnett*, (W. D. N. Y. 1917) 242 Fed. 83, remanding a case because the alleged federal question, if any, consisted of a defense based on the effect of the Interstate Commerce Act.

Speaking of an action by the state to recover taxes under Nevada Rev. Laws, § 3661, the court said: "It is impossible to assume that such an action could be removed to this court on the ground that it does or may involve a question arising under the Constitution or laws of the United States." *Nevada-California Power Co. v. Hamilton*, (D. C. Nev. 1916) 235 Fed. 317.

II. DIVERSE CITIZENSHIP AND ALIENAGE

1. In General (p. 315)

A state is not a citizen.—See cases under this side head in notes to vol. IV, p. 265, § 1, *supra*, at p. 1258.

Action by assignee.—A suit against an alien by a citizen administrator of a citizen assignee of an alien is removable. *Sands v. Carruthers*, (S. D. N. Y. 1917) 243 Fed. 636.

Both plaintiff and defendant nonresidents.—"An action brought in a state court outside of the federal court district of the plaintiff's residence is not, on objection of plaintiff, removable to the

federal court on the petition of the defendant, who is a resident of another state," on the ground of diverse citizenship. *St. Louis, etc., R. Co. v. Hodge*, (1916) 53 Okla. 427, 157 Pac. 60, followed in *Ft. Smith, etc., R. Co. v. Knott*, (Okla. 1916) 159 Pac. 847. "A suit commenced in a state court in a federal district, of which neither plaintiff nor defendant are residents, though they are residents of different states, cannot be removed to the federal court of the state wherein the action is pending, for the reason that such federal court had no jurisdiction of the original suit." *Gist v. Equitable Surety Co.*, (1915) 161 Wis. 79, 151 N. W. 382, where such removal on the ground of diverse citizenship was denied. "It is well settled that . . . a controversy between a citizen of one state and a citizen of another state in a third state is not removable." *Stewart v. Cybur Lumber Co.*, (1916) 111 Miss. 844, 72 So. 276.

3. How Amount in Controversy Made to Appear (p. 319)

From the record.—A plaintiff having a claim exceeding the jurisdictional amount for removal may sue for a sum less than the jurisdictional amount and thus prevent the defendant from removing the case. *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

Counterclaim.—Where the plaintiff's pleading in an action at law fixed the amount in controversy at \$2,950 and the defendant pleaded a counterclaim of \$158.40, and removed the cause, it was remanded because the amount in controversy was less than \$3,000. *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

4. Who May Remove the Suit (p. 320)

Only the defendant.—Where a defendant filed an answer and cross-complaint at the same time with his petition and bond for removal, wherein he sought a personal judgment against the plaintiff, he thereby became a plaintiff and ceased to be a "defendant" entitled to remove the case. *Hansen v. Pacific Coast Asphalt Cement Co.*, (S. D. Cal. 1917) 243 Fed. 283.

One not a party to the record.—In *First Nat. Bank v. Pancake*, (1916) 172 N. C. 513, 90 S. E. 515, after the death of the nonresident defendant, certain parties filed a purported certificate of their qualifications as executors by appointment of a court in a sister state, and without leave declared themselves parties defendant and filed a petition for removal. The court held that "not having been made parties by any order of court, and not having presented a case which would have entitled them to be

recognized as parties, they were not in condition to ask for removal."

Aliens.—A foreign corporation and an alien individual who were sued jointly in tort in a court of the state of which the plaintiffs were citizens, had a right as "nonresidents" to remove the suit to the federal court, although the alien was a resident of that state, the word "nonresidents" being construed as "non-citizens" of the state. *Best v. Great Northern R. Co.*, (D. C. Mont. 1917) 243 Fed. 789.

One of several necessary defendants cannot alone remove the cause, where there is no separable controversy. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254.

5. Petition for Removal (p. 322)

Averment of citizenship.—Where a defendant seeking to remove a case brought against him by a citizen shows merely that he is a citizen of the United States, and the record is barren of evidence that he is a citizen of any state, he must be regarded as a citizen of the same state as the plaintiff and therefore not entitled to removal on the ground of diversity of citizenship. *Hough v. Societe Electrique Westinghouse de Russie*, (S. D. N. Y. 1916) 231 Fed. 341.

Of corporation.—An averment that a corporation is a citizen of a particular state is insufficient; the averment should be that it is a corporation organized under the laws of that state. *Fentress Coal, etc., Co. v. Elmore*, (C. C. A. 6th Cir. 1917) 240 Fed. 328, 153 C. C. A. 254, reversing a judgment for the plaintiff in a case removed on such insufficient petition, but with leave to amend the record in the court below, and thus support the judgment, by making the proper averment.

Fraudulent joinder to prevent removal.—In a petition for removal by a non-resident lessee railroad company of an action of tort against said company and its resident lessor, an allegation that the said lessor company was "wrongfully, fraudulently and falsely" made a party for the sole purpose of preventing removal to the federal court, without any intention on the part of the plaintiff of proving against it any of the tortious acts alleged by the plaintiff, was on its face insufficient under the decisions of the federal Supreme Court. *McAllister v. Chesapeake, etc., R. Co.*, (1917) 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735.

III. SEPARABLE CONTROVERSIES

2. Who May Remove (p. 328)

Alien.—In *Hough v. Societe Electrique Westinghouse de Russie*, (S. D. N. Y. 1916) 232 Fed. 635, the court allowed an

alien defendant to remove a case on the ground of a separable controversy, but the question whether an alien had a right of removal on that ground was not raised or discussed. In *Bradshaw v. Bowden*, (W. D. Wash. 1914) 226 Fed. 323, it seems to have been assumed that an alien defendant may remove a suit on the ground of a separable controversy.

4. *Separable Character of Controversy* (p. 329) .

The federal court will follow the state rule as to whether a cause of action is entire. *Beckwith v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 223 Fed. 858.

Event of suit not a test.—“In *Lathrop, etc., Co. v. Interior Constr., etc., Co.*, [1909] 215 U. S. 246, 30 S. Ct. 76, 54 U. S. (L. ed.) 177, it was held that where the plaintiff insisted on the joint liability of the nonresident and resident defendants, the dismissal of the complaint on the merits as to the defendants who were citizens of the same state with the plaintiff did not make the case then removable, and did not prevent the plaintiff from taking a verdict against the defendants, who might have removed the suit had they been sued alone, or had there originally been a separable controversy as to them.” *American Car, etc., Co. v. Kettelhake*, (1915) 236 U. S. 311, 35 S. Ct. 355, 59 U. S. (L. ed.) 594.

Where the defendants are charged with a joint negligence in the state court it is not necessary that the recovery upon the trial be against all in order to constitute a nonseparable controversy. *Beckwith v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 223 Fed. 858.

Misjoinder.—In *Hough v. Societe Electrique Westinghouse de Russie*, (S. D. N. Y. 1916) 232 Fed. 635, an action at law, Judge Learned Hand said: “The question whether the controversies are separable depends altogether upon the way the plaintiff has laid his action.”

“It has become the settled law of the Supreme Court of the United States that, whether the action is joint or several only is a question exclusively for the state court to determine.” *Rountree v. Mt. Hood R. Co.*, (D. C. Ore. 1916) 228 Fed. 1010.

Where the grievances alleged in a complainant's bill raise one controversy, which can be fully determined without the presence of another party, “that its determination also concludes or precludes another is no reason why it should not be treated as a separable one, and be subject to removal into the federal court.” *English v. Supreme Conclave, etc.*, (D. C. N. J. 1916) 235 Fed. 630, *distinguishing* *Regis v. United Drug Co.*, (C. C. Mass. 1910) 180 Fed. 201.

“An action of tort, which might have been brought against many persons or

against any one or more of them, and which is brought in a state court against all jointly, contains no separate controversy which will authorize its removal by some of the defendants into the Circuit Court of the United States, even if they file separate answers and set up different defenses from the other defendants, and allege that they are not jointly liable with them, and that their own controversy with the plaintiff is a separate one. . . . A separate defense may defeat a joint recovery, but it cannot deprive a plaintiff of his right to prosecute his suit to final decision in his own way. The cause of action is the subject-matter of the controversy, and that is, for all the purposes of the suit, whatever the plaintiff declares it to be in his pleadings.” *Powers v. Chesapeake, etc., R. Co.*, (1898) 169 U. S. 92, 18 S. Ct. 264, 42 U. S. (L. ed.) 673.

Action against master and servant.—In an action by a servant against the master and another to recover damages for personal injuries, both being charged with negligence, there is no separable controversy. *Deutsch v. Alaska Gastineau Min. Co.*, (W. D. Wash. 1915) 237 Fed. 215, *citing* *Chicago, etc., R. Co. v. Willard*, (1911) 220 U. S. 413, 31 S. Ct. 460, 55 U. S. (L. ed.) 521.

Where the plaintiff's pleading in an action of tort against master and servant for personal injuries shows an individual liability on the part of the servant, there is no separable controversy. *Southern R. Co. v. Sewell*, (1916) 18 Ga. App. 544, 90 S. E. 94.

Action of tort against lessor and lessee railroad company.—Where the plaintiff's pleading in an action against a resident lessor railroad company and its nonresident lessee railroad company to recover for negligently running over and killing plaintiff's intestate in the operation of the road, stated a cause of action against the lessor company, according to the decisions of the highest court of the state, the lessee railroad company had no removable separable controversy. *McAllister v. Chesapeake, etc., R. Co.*, (1917) 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735.

In the case of *Chicago, etc., R. Co. v. McWhirt*, (1917) 243 U. S. 422, 37 S. Ct. 392, 61 U. S. (L. ed.) 826, U. S. Adv. Ops. 1916, p. 392, *affirming* (Mo. 1916) 187 S. W. 830, an action for personal injuries by negligence was brought in a Missouri state court against two railroad companies, one incorporated in Missouri and the other in Illinois. The former had constructed and still owned the railroad, and the latter was operating it under a lease. The court said: “The latter sought to remove the case against it into the federal court upon the ground that the same involved a dis-

tinct and separable controversy between citizens of different states. But the petition for removal was denied, and rightly so. Under the local law the case stated in the plaintiff's pleading was one of joint liability on the part of the defendants, and, for the purpose of passing upon the petition for removal, this was decisive of the nature of the controversy, there being no showing that the defendants were fraudulently joined for the purpose of preventing a removal."

Malicious prosecution and false imprisonment.—In *Bradshaw v. Bowden*, (W. D. Wash. 1914) 226 Fed. 323, the court said: "Plaintiff, in his complaint, after alleging jurisdictional facts, states (paragraph II): 'That on the 15th day of August, 1914, the defendants herein, the defendant corporation through its duly accredited officers, agents, and servants, and its codefendants, wrongfully and unlawfully entered into, arrested the plaintiff and imprisoned the plaintiff in the common jail of the city of Seattle, and kept him imprisoned in said jail without color of authority, and in furtherance of said scheme and confederation as aforesaid, until August 19, 1914, when plaintiff was liberated in manner and form hereinafter set out'—and further sets out that, upon a hearing in court upon such alleged unlawful and fraudulent charge, plaintiff was fully exonerated and discharged, and that he was compelled to go to large expense, and alleges injury to this good name and reputation in the sum of \$25,000, which he seeks to recover from each of the defendants. The plaintiff, in his complaint, has elected to sue the defendants jointly, and upon the face of the complaint, which was the only pleading on file at the time the removal was ordered, there is no separable controversy between the plaintiff and the petitioning defendant, and the cause is therefore not removable upon that ground. Chicago, etc., R. Co. v. Willard, [1911] 220 U. S. 413, 31 S. Ct. 460, 55 U. S. (L. ed.) 521."

A suit in equity by a receiver of a railroad company against a nonresident railroad company and resident individuals to enjoin them from carrying out a conspiracy to injure plaintiff's company by violating a certain contract with him as to routing of traffic, did not show a removable separable controversy with the defendant railroad company, as the action was brought essentially in tort against all the defendants as wrongdoers. *Smith v. Barnett*, (W. D. N. Y. 1917) 242 Fed. 83.

Suit in equity against conspirators.—In a suit in equity against several defendants to recover property held by sev-

eral of them and alleged to have been obtained by the fraud and conspiracy of some of the defendants, one of the defendants so charged cannot have a separable controversy with the plaintiff. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254, the court holding that the case could not be distinguished from *Baillie v. Backus*, (D. C. Ore. 1916) 230 Fed. 711, "where it was held that one conspirator alone could not remove claiming a separable controversy."

Bill by corporation receiver against directors.—Where a state statute prohibited directors of a corporation from paying dividends except upon the surplus or from the net profits arising from the business of the corporation, and imposed a joint and several liability upon them for any wilful or negligent violation, which in case of insolvency was enforceable by the receiver to the full amount of any loss sustained by the corporation by reason of such diversion, and such receiver filed a bill against former directors of a corporation, praying that the defendants "be decreed jointly and severally to pay the full amount of the said dividends," there was no separable controversy authorizing removal by one of the defendants. *Holcombe v. Ames*, (1917) 87 N. J. Eq. 486. 100 Atl. 609.

Action against corporation and liquidator.—In *Hough v. Société Electrique Westinghouse de Russie*, (S. D. N. Y. 1916) 232 Fed. 635, modifying on rehearing, (S. D. N. Y. 1916) 231 Fed. 341, an action at law brought in the New York Supreme Court by a citizen of New York against a foreign corporation and its liquidator, the latter being a citizen of New York, it was held that the case was properly removed by the defendant on the ground of a separable controversy.

An action against principal and surety on a contractor's bond for public work, to recover damages for its breach, was not removable by the surety. *Seattle v. Beer's Bldg. Co.*, (W. D. Wash. 1917) 242 Fed. 988.

Action for money loaned.—In *German-American Mercantile Bank v. Gas Service Corp.*, (W. D. Wash. 1915) 228 Fed. 827, holding that there was no removable separable controversy, the court said: "The main purpose of the action is to recover the money loaned to the defendant Gas Service Company upon the faith and credit of the Surety Company, it 'being interested in the project for which the money to be loaned as aforesaid is to be used,' and 'admits that all money advanced to said parties upon their promissory note is advanced upon the strength of this contract of guaranty, and . . . further acknowledges that it is interested in the making of said loan, and will receive a valuable consideration for the execution of this agreement.' The controversy, the con-

tract of loan, is indivisible. The fact that the evidence of the relation of the parties to this contract of loan is on separate sheets of paper, instead of one paper, does not change the relation or the rights of the parties to the controversy; and because of the fact that the plaintiff might have sued the parties separately, but elects to sue them jointly, the defendant is not given the right to say that the action shall be several. *Torrence v. Shedd*, [1892] 144 U. S. 527, 2 S. Ct. 726, 36 U. S. (L. ed.) 528."

5. How Separable Controversy Made to Appear (p. 338)

From plaintiff's pleading.—"In deciding whether or not a separable controversy exists between the plaintiff and the defendant claiming the right to remove, the cause of action alleged in the plaintiff's pleading must be accepted as the only criterion of the decision, and if it is there alleged that the cause of action is joint, and if it appears that some of the defendants are citizens of the same state with the plaintiff, it must be held that the suit is not removable." *Holcombe v. Ames*, (1917) 87 N. J. Eq. 486, 100 Atl. 609, following *National Docks, etc., Connecting R. Co. v. Pennsylvania R. Co.*, (1893) 52 N. J. Eq. 58, 28 Atl. 71, *affirmed* 52 N. J. Eq. 590, 33 Atl. 50.

V. NO APPEAL FROM ORDER REMANDING (p. 349)

"This court has more than once held that such an order is not subject to review, directly or indirectly, but is final and conclusive. *Missouri Pac. R. Co. v. Fitzgerald*, 160 U. S. 556, 580-583, 16 S. Ct. 389, 40 U. S. (L. ed.) 536, 542, 543; *McLaughlin Bros. v. Hallowell*, 228 U. S. 278, 286, 33 S. Ct. 465, 57 U. S. (L. ed.) 835, 839; *Pacific Live Stock Co. v. Lewis*, 241 U. S. 440, 447, 36 S. Ct. 637, 60 U. S. (L. ed.) 1084." *Yankaus v. Feltenstein*, (1917) 244 U. S. 127, 37 S. Ct. 567, 61 U. S. (L. ed.) 1036.

Indirect review forbidden.—Where the federal court, by its remanding order, adjudges that the removal proceedings were unauthorized, "that order is not subject to review, either directly or indirectly, but is final and conclusive." *Pacific Live Stock Co. v. Lewis*, (1916) 241 U. S. 440, 36 S. Ct. 637, 60 U. S. (L. ed.) 1084, holding that in a subsequent suit in the same federal court by the defendant in the first suit, involving the same subject matter, the said defendant, now plaintiff, was not entitled to an injunction to restrain the continued prosecution of the former case in the state court, on the assumption that the removal proceedings were effective.

An order of remand is not reviewable by a state appellate court on appeal from a judgment of the state court in the

cause after remand. *Texas, etc., R. Co. v. Conway*, (Tex. Civ. App. 1916) 182 S. W. 52.

Vol. IV, p. 349, sec. 3.

I. IN GENERAL (p. 350)

Necessity of petition.—"As we have very recently held in *Key v. West Kentucky Coal Co.*, [W. D. Ky. 1916] 237 Fed. 258, a case cannot be removed on a mere 'motion' made in the state court, and particularly after (the transcript having been filed) a motion to remand the case has been sustained by the federal court. The statute does not authorize the removal of a case on motion. That must be done upon a petition which conforms to the requirements of the law at the time it is filed." *Nelson v. Black Diamond Min. Co.*, (W. D. Ky. 1916) 237 Fed. 264.

To what district removable.—Where there is the requisite diversity of citizenship and amount in controversy, a suit by a plaintiff in the court of a state of which neither party is a citizen may be removed by the defendant to the federal court in that district. *Hohenberg v. Mobile Liners*, (S. D. Ala. 1917) 245 Fed. 169.

Where the plaintiff in a suit in a New York court was a citizen of Pennsylvania and the defendant a citizen of New Jersey, the cause was remanded on motion of the plaintiff after its removal to the federal court in New York. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254.

A suit by an alien against a corporation created by a state other than that in which the suit is brought may be removed to the federal court for the district in which the suit is pending. This is because an alien is without the language and purpose of the venue provisions now constituting Judicial Code, § 51, 1912 Supp., p. 153, and the defendant corporation might have sued the plaintiff in that federal court had it been able to serve him with process in that district, and the plaintiff having brought himself into the district by beginning his action in it, has placed himself in a situation in which process can be served on him, and the removal proceedings have the same force and effect as the service of process on him. *Keating v. Pennsylvania Co.*, (N. D. Ohio, 1917) 245 Fed. 155.

Judicial Code, § 29, 1912 Supp., p. 145, title JUDICIARY, requires in plain language that the removal, if made at all, must be to the federal district in which the suit is pending. *Stewart v. Cybur Lumber Co.*, (1916) 111 Miss. 844, 72 So. 276.

"But whatever may be the force of the argument in favor of removal, based upon language and history, it ignores wholly the purpose and spirit of all the removal

acts. While it has often been said by the courts that the law of removals is wholly statutory, yet the express words of the statute cover only a small part of the cases arising in actual practice. It is possible for some 150 different cases of diverse citizenship and citizenship and alienage to be presented in removal cases; but the statutes expressly cover only a very few of these, the rest being left to construction. It is thus often necessary to disregard express words, and find the proper rule from the intent and history of the legislation." *Eddy v. Chicago, etc., R. Co.*, (W. D. Wis. 1915) 226 Fed. 120.

In *Eddy v. Chicago, etc., R. Co.*, (W. D. Wis. 1915) 226 Fed. 120, an action by a Montana citizen was brought against a Wisconsin citizen (corporation) in a Minnesota state court, and removed on the ground of diverse citizenship to the federal court in the district of Wisconsin. The plaintiff's motion to remand was granted.

An alien may be sued in any federal district in which he may be found and in which valid service is made upon him. Hence if he is sued in a state court and the case is removable, it may be removed to the federal court for that district. *Bradshaw v. Bowden*, (W. D. Wash. 1914) 226 Fed. 323.

Where only one of the plaintiffs was a resident of the district to which it was proposed to remove a case on the ground of diverse citizenship, it was conceded that the cause was not removable to that court over the objection of the nonresident plaintiff unless it fell within one of the provisions of Judicial Code, § 57, 1912 Supp., p. 155. *Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co.*, (D. C. Idaho 1915) 228 Fed. 528.

In *New York Coal Co. v. Sunday Creek Co.*, (S. D. W. Va. 1916) 230 Fed. 295, an action was brought by a Maine corporation in an Ohio court against a West Virginia corporation and a New Jersey corporation. Both defendants were doing business in Ohio, where the contract of lease, whose covenants were alleged to have been broken by defendants, was being executed. The West Virginia corporation specially appeared and filed a petition for removal to the federal court for the southern district of West Virginia, that being the state and district of its incorporation and residence. The state court granted the petition, and the plaintiff moved to remand the case to the state court for lack of jurisdiction in the federal court. The motion to remand was granted.

In *Pavick v. Chicago, etc., R. Co.*, (E. D. Wis. 1914) 225 Fed. 395, the plaintiff, a resident of Iowa, sued the defendant, a resident of the eastern district of Wisconsin, in the state court of Minnesota. The court ordered a remand on plaintiff's motion.

II. PETITION FOR REMOVAL (p. 351)

Time to file petition for removal.—A case is not removable on a petition alleging a fraudulent joinder of defendants to prevent removal unless such petition is filed within the time required by the federal statute. *Key v. West Kentucky Coal Co.*, (W. D. Ky. 1916) 237 Fed. 258.

Removal of condemnation proceedings.—In *In re Seattle*, (W. D. Wash. 1916) 237 Fed. 100, the court remanded a case because the petition for removal of a condemnation proceeding was filed too late.

State court's interpretation of state statute.—A decision of the highest court of a state construing the state statute fixing the time in which a defendant shall answer or otherwise plead should be followed by the federal court. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 238 Fed. 561.

Extension of time.—"It is settled in this court that, whensoever this act of Congress is applicable, its reference to statute or rule time means the time fixed by statute or rule, and not a time later fixed by extension on order of court or stipulation of parties. See *Wilson's Case*, [1907] 135 Ia. 531, 113 N. W. 348, 14 Ann. Cas. 266." *Markey v. Chicago, etc., R. Co.*, (1915) 171 Ia. 255, 153 N. W. 1053.

A petition for removal is filed too late where the statutory time for the defendant to answer or otherwise plead has expired, though within the time extended by a local rule of the state court in which the cause is pending, especially where the highest court of the state has decided that the statute authorizing the court to extend the time to plead does not have the effect to extend the time for removal. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, granting a motion to remand.

In *Pilgrim v. Aetna Life Ins. Co.*, (D. C. N. J. 1916) 234 Fed. 958, a rule of the New Jersey Supreme Court authorized the making of an order by said court, or a justice thereof, extending the time for filing an answer beyond the twenty days required by another rule for a defendant's answer. The defendant having obtained such an order, filed a petition for removal within the extended period, but after expiration of twenty days specified in the main rule. Plaintiff's motion to remand on the ground that the petition for removal was not filed in time was granted.

In *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884, the court said: "The objection that the proceeding to remove was not taken in time is not well grounded. The time of the defendants to appear was duly extended by the state court; it having, upon stipulation of the parties, made an

order that 'the time for hearing application for injunction is extended to and including August 10, 1912, at ten o'clock A. M., the defendants to have the same rights as if the last-named date was the return day.' The relief asked against the defendant Leininger being an injunction, the effect of this order was to give him to and including the date indicated in the order in which to make return to the order to show cause and to plead. On that date he presented and filed his petition and bond for removal, and this was in time. . . . It being within the power of the state court, under the statutes of the state and its rules, to grant the extension given, which is not questioned, a petition filed within the time thus given is within the statute. *Chiatovich v. Hanchett*, [C. C. A. Nev. 1897] 78 Fed. 193, and cases there cited."

Where the time to file pleadings is given at some particular term by order of court and the same is not objected to, such order is taken to have been acquiesced in by defendant, and his right of removal is thereby waived. *Dills v. Champion Fiber Co.*, (1917) 175 N. C. 49, 94 S. E. 694.

The term "rule of the state court."—"The reference in the federal statute to the rule of the state court in which suit is brought to answer or plead clearly relates, not to special orders granted upon application or stipulations of parties in any given case, but rather to a general rule fixing the date at which all defendants are required to appear in order to avoid being held in default." *Wilson v. Big Joe Block Coal Co.*, (1907) 135 Ia. 531, 113 N. W. 348, 14 Ann. Cas. 266, followed in a case removed from an Iowa court in *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561.

"This term 'rule of court' appearing in the statute has reference to a standing rule having the force of law. *Mecke v. Mineral Co.*, 122 N. C. 790-797, 29 S. E. 781; *Fox v. Railroad (C. C.)*, 80 Fed. 945." *Dills v. Champion Fiber Co.*, (1917) 175 N. C. 49, 94 S. E. 694.

Extension of time by written stipulation was recognized as efficacious to that end in *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621, disapproving rulings of other courts to the contrary.

In *Solomon v. Pennsylvania R. Co.*, (E. D. N. Y. 1917) 240 Fed. 231, the plaintiff gave the defendant a written stipulation extending the time "to answer, plead or make any motion." On the next day after expiration of the extended time, the plaintiff stipulated that the defendant should have 20 days' further time to "answer," but struck out the words "demur or otherwise plead." "On such a stipulation, even if we assumed the default was opened thereby, the power to remove was lost," said the

court, granting a motion to remand where the cause was removed on a petition subsequently filed.

"That a case not removable when commenced may afterwards become removable is settled by *Ayers v. Watson*, 113 U. S. 594; *Martin v. Baltimore, etc., R. Co.*, 151 U. S. 673, 688, 691; *Powers v. Chesapeake, etc., R. Co.*, 169 U. S. 92; and *Fritzlen v. Boatmen's Bank*, 212 U. S. 364." *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

A case arising under the laws of the United States and between citizens of different states, but nonremovable on the complaint, because arising under the federal Employers' Liability Act (see proviso to Judicial Code, § 28, 1912 Supp., p. 144), "cannot be converted into a removable one by evidence of the defendant or by an order of the court upon any issue tried upon the merits," and such conversion can only be accomplished by the voluntary amendment of his pleadings by the plaintiff. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

In *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788, where plaintiff amended his pleading and served a new summons, a petition for removal filed before plaintiff could have taken judgment for want of an answer was held to have been in time under the state law and practice.

An increase of the amount sued for, by amendment of plaintiff's pleading, by which the case for the first time becomes one of federal cognizance, extends the time to file application for removal. *Markey v. Chicago, etc., R. Co.*, (1915) 171 Ia. 255, 153 N. W. 1053; *Martin v. Richmond Cotton Oil Co.*, (1916) 194 Mo. App. 106, 184 S. W. 127.

Where a suit first became removable by reason of plaintiff's amendment of his pleading increasing the ad damnum above the jurisdictional amount, the defendant's petition for removal filed on the day he first had actual knowledge of the amendment was in time, even though it was about two weeks after the amendment, for which leave of court had been obtained, was filed; constructive notice of the amendment not being the equivalent of actual notice. *Markey v. Chicago, etc., R. Co.*, (1915) 171 Ia. 255, 153 N. W. 1053, citing as "substantially in point," *Fogarty v. Southern Pac. R. Co.*, (S. D. Cal. 1903) 121 Fed. 941.

An order of nonsuit in the trial court of a state as to one of two defendants, a resident, the other being a nonresident, which is appealed from by the plaintiff with the right of review in the Supreme Court of the state, does not make the case removable as to the nonresident defendant. *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S.

(L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

Direction of verdict.—"It is, however, well settled by the later opinions of the Supreme Court of the United States that where an action is properly brought in a state court against a nonresident defendant and a resident defendant, sued jointly, the fact that the trial court may erroneously, at the conclusion of the evidence, direct a verdict in favor of the resident defendant, does not authorize a removal of the action as to the nonresident defendant, on the ground of diverse citizenship, if exception is taken to the ruling of the court in directing the verdict. In such a case the resident defendant will be treated as a party to the suit until the question has been terminated by the state appellate court." *Landers v. Tracy*, (1916) 171 Ky. 657, 188 S. W. 763, *following* *American Car, etc., Co. v. Kettelhake*, (1915) 236 U. S. 311, 35 S. Ct. 355, 59 U. S. (L. ed.) 594.

Second petition for removal.—"Two things must concur to vindicate the filing of a second petition for removal, namely, the appearing in the record for the first time of a state of facts which authorizes the removal and the prompt filing by the defendant of a new petition showing the facts as they then exist." *Key v. West Kentucky Coal Co.*, (W. D. Ky. 1916) 237 Fed. 258, 261, where a case removed and remanded and again removed was again remanded.

An averment of residence of parties is not the equivalent of an averment of citizenship. *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621.

Averments of fraudulent joinder.—"It is only in cases wherein the facts alleged in the petition for removal are sufficient to fairly raise the issue of fraud that the state court is required to surrender its jurisdiction." *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

An allegation of fraudulent joinder is not alone sufficient in a petition for removal. *W. P. Carmichael Co. v. Miller*, (Tex. Civ. App. 1915) 178 S. W. 976.

A petition for removal alleging a fraudulent joinder in general terms is insufficient to effect a removal. *Cogdill v. Clayton*, (1915) 170 N. C. 526, 87 S. E. 338.

"It is not sufficient to charge generally or by indefinite averments that the joinder is or was intended to be in fraud and prevention of the nonresident's right of removal. *Hough v. Southern R. Co.*, [1907] 144 N. C. 692, 57 S. E. 469; *Blackwell's Durham Tobacco Co. v. American Tobacco Co.*, [1907] 144 N. C. 352, 57 S. E. 5, 9 L. R. A. (N. S.) 270." *Hollifield v. Southern Bell Telephone, etc., Co.*, (1916) 172 N. C. 714, 90 S. E. 996.

"The right of removal may not be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy; but the defendant seeking removal must allege facts that form the conclusion that the joinder is fraudulent, unless it is apparent upon the face of the complaint, and merely to apply the term 'fraudulent' will not suffice." *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188.

Where the facts stated in detail in a petition for removal, and not controverted, show that the joinder of a codefendant was altogether fraudulent and collusive and was made with the sole intent to prevent a removal, it sufficed to effect a removal. *Nelson v. Black Diamond Min. Co.*, (W. D. Ky. 1916) 237 Fed. 264.

In *Bradshaw v. Bowden*, (W. D. Wash. 1914) 226 Fed. 323, an action for malicious prosecution was removed to the federal court, where, denying the plaintiff's motion to remand, the court held the allegations of fraudulent joinder made in the petition for removal were sufficient.

"In no case can the right of removal be established by a petition to remove which amounts simply to a traverse of the facts alleged in the plaintiff's petition, and in that way undertaking to try the merits of a cause of action, good upon its face." *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

In *Chicago, etc., R. Co. v. Whiteaker*, (1915) 239 U. S. 421, 36 S. Ct. 152, 60 U. S. (L. ed.) 360, *affirming* (1913) 252 Mo. 438, 160 S. W. 1009, the allegations of fraudulent joinder were held insufficient.

In *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003, the allegations of fraudulent joinder were held insufficient.

"The cause of action is the subject of the controversy, and that is whatever the plaintiff declares it to be in his complaint and is the basis for order of removal. But where it is charged in the petition for removal that persons are fraudulently joined as parties defendant for the purpose of denying to the petitioner the right of removal to the federal forum, and issue is taken upon this charge, the issue thus raised forms the basis which determines the forum in which the cause should be tried. If no issue is taken of the charge made, then the allegations stand as confessed. *Bradshaw v. Bowden*, [(W. D. Wash. 1914) 226 Fed. 323]. If issue is taken, then that issue must be determined by this court." *Trana v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 228 Fed. 824.

Where a plaintiff in an action of tort for death by wrongful act caused by negligence joined lessor and lessee railroad companies as defendant joint tortfeasors, his motive for so doing was immaterial. *Case v. Atlanta, etc., R. Co.*, (W. D. S. C. 1915) 225 Fed. 862, remanding to the state court a case which had been removed on the alleged ground of fraudulent joinder.

Verification.—See notes to 1912 Supp., p. 145, Jud. Code, § 29, *infra*, p. 1315.

Where a suit by a postmaster against a post-office inspector was removable as arising under the postal laws, and a petition for removal was verified by one signing his name as "United States Attorney" and "attorney for petition," the verification was sufficient, as it was possible that the words "United States Attorney" were *descriptio personæ*. *Porter v. Coble*, (C. C. A. 8th Cir. 1917) 246 Fed. 244, 158 C. C. A. 404, where it seems also that the objection was first made in the appellate court.

Amending petition in federal court.—In *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602, the citizenship of plaintiff and defendant in a removed case was sufficiently alleged in the petition for removal, but, the action being on an assigned claim and the jurisdiction depending on the citizenship of the assignor, such citizenship was not alleged. After argument on a motion to remand, and before any ruling thereon could be made, the defendant filed a motion for leave to amend the petition by showing the citizenship of plaintiff's assignor, and the motion was granted and motion to remand denied.

The court has power to allow amendment of an averment of residence in a petition for removal by alleging citizenship in proper form. *Hinman v. Barrett*, (N. D., N. Y. 1917) 244 Fed. 621.

Filing petition and bond.—The lodging of a sufficient petition and bond with the clerk of the court is sufficient, whether he places his file mark thereon or not. *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602.

III. BOND FOR REMOVAL (p. 360)

See notes to 1912 Supp., p. 145, Jud. Code, § 29, *infra*, p. 1315.

Execution by foreign surety company.—Where a bond was signed by the president of the petitioning defendant corporation, and by a surety company by its agent and attorney in fact, with the surety company's corporate seal attached it was "amply sufficient to authorize the state judge to accept the same, unless something was brought to his attention questioning the validity of said bond." *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602, where the court, de-

nying a motion to remand, overruled objection that the bond was insufficient on its face, because it was "executed by a foreign corporation in a foreign jurisdiction with a foreign surety company, and it is not made to appear that the seals affixed have been authorized."

In *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917), denying a motion to remand upon the contention that it did not appear that the surety on the bond, which was a foreign surety company, was authorized to do business in Florida, where the removal was had, the court said: "The foreign corporation act of Florida has been construed by the state supreme court as making the contracts voidable and not void, and such act has been amended by the legislature at its session in 1915. But in any event by the terms of the act the foreign corporation not complying with the act can take no advantage of such noncompliance, but is bound by its contracts. Section 29 of the Judicial Code requires 'surety,' not 'sureties.'"

IV. RELATIVE AUTHORITY OF STATE AND FEDERAL COURTS (p. 362)

The mere filing of a petition for removal, in due time and after notice, if the petition be sufficient and accompanied by a sufficient bond, automatically effects a removal, notwithstanding refusal of the state court to order a removal. *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602.

"The orderly and proper procedure upon presenting a petition and bond for removal is to apply to the state court for a formal order granting the petition; but where this is done, and the order is refused, the cause, if a proper one for removal under the law, stands nevertheless as effectually removed from the jurisdiction of the state court as though such order had been granted." *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884.

"As the petition for removal was per se sufficient, and as the proper bond was given and approved by the state court when the petition was filed, no order of the state court removing the case to this court was necessary. It was, ipso facto, removed by the filing of the petition for removal and the giving of the bond." *Nelson v. Black Diamond Min. Co.*, (N. D. Ky. 1916) 237 Fed. 264.

A case is ipso facto removed on filing a sufficient petition and bond, though the state judge denied removal. *Webb v. Southern R. Co.*, (S. D. Ala. 1916) 235 Fed. 578.

Where a petition for removal, sufficient for that purpose, was filed coincidentally with a demurrer to the complaint, the action of the state court in denying an

order of removal did not result in its retaining jurisdiction of the cause for the purpose of passing upon such demurrer. *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884.

"If, upon the face of the record, including the petition for removal, the suit does not appear to be removable, then the state court is not bound to surrender its jurisdiction, and may proceed as if no application for removal had been made." *Steed v. Henry*, (1915) 120 Ark. 583, 180 S. W. 508.

V. EFFECT OF PETITION AS GENERAL OR SPECIAL APPEARANCE (p. 366)

A foreign corporation having removed a case may properly move in the federal court to set aside the service upon it for noncompliance with the state statute requiring such service to be made upon "a managing agent," and also for the reason that the said corporation was not doing business in the state. *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706.

VI. STATE COURT TO PROCEED NO FURTHER (p. 367)

Effect of merely docketing case in federal court.—Where the state court granted an order of removal, which was reversed on appeal by the state Supreme Court, and upon the cause coming on again for trial the defendants set up that the case had been docketed in the federal court, that no motion had been made to remand the same, that the order removing it had not been revoked, and that the case was then pending for trial in the federal court, a subsequent judgment by the state court in favor of the plaintiff on the merits was affirmed by the state and by the federal Supreme Courts upon determining that the order of removal was erroneous. *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

Injunction against further proceeding.—In *Webb v. Southern R. Co.*, (S. D. Ala. 1916) 235 Fed. 578, the defendant, having filed a sufficient petition and bond for removal in the state court, which refused to make an order of removal, filed a transcript in the federal court with a petition for an injunction against further prosecution of the suit in the state court, and a restraining order was issued, which was afterward made permanent.

In *Alabama Great Southern R. Co. v. American Cotton Oil Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 11, 143 C. C. A. 313, a defendant, having removed a removable case, brought a bill in equity in the federal court where the case was pending to enjoin the plaintiff from further harass-

ing him by attempting to proceed with the suit in the state court, the latter having refused to grant the removal. It was held that the injunction should be granted. For a similar instance of injunction granted on a bill filed see *Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co.*, (D. C. Idaho 1915) 228 Fed. 528.

Second petition for removal.—"Several general propositions are very clearly established by the authorities cited, among them, that the removal statute does not authorize nor permit the filing of a second petition for removal, except where, before the trial on the merits, the plaintiff changes the parties by a dismissal of the local defendant, or where before, or even during, the trial he amends his pleading, and thereby increases the amount in controversy to a sum exceeding \$3,000, exclusive of interest and costs, or himself does some other thing analogous to those mentioned." *Key v. West Kentucky Coal Co.*, (W. D. Ky. 1916) 237 Fed. 258.

VII. CIRCUIT COURT TO PROCEED (p. 368)

Restraining proceedings in state court.—"If a cause is properly removed from a state to a federal court, the latter may, when it is necessary to do so, issue an injunction to restrain further proceedings in the state court, if such court should persist in proceeding." This it may do in an ancillary suit for injunction for the purpose of protecting its own jurisdiction, and in such suit, the court having denied a motion to remand, the jurisdiction acquired by the removal cannot be questioned or re-examined, and the court "can only consider the question of jurisdiction of the ancillary suit so far as to ascertain whether the ancillary character of the suit is made to appear by the allegations of the bill." *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

When injunction denied.—Since a decree in equity is to be shaped as the rights of the parties exist at the time of the decree, and where the answer to an ancillary bill for injunction against further proceedings in the state court in a removed case admitted the intention of the defendant to proceed in the state court if the latter should decide that the case was not removable, but said court afterward but before decree on the ancillary bill, granted the removal, the federal court properly refused to grant the injunction and its dismissal of the bill without prejudice was affirmed. *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

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Jurisdiction doubtful.—"It is the duty of the court to remand, where there is

doubt as to whether the case has been properly removed." *Hanset v. Pacific Coast Asphalt Cement Co.*, (S. D. Cal. 1917) 243 Fed. 283. "To the same point is *State v. Puget Sount Traction, etc., Co.*, (W. D. Wash. 1917) 243 Fed. 748; *Orr v. Baltimore, etc., R. Co.*, (S. D. N. Y. 1914) 242 Fed. 608.

"It is the duty of the court where doubt exists as to jurisdiction to remand the cause to the state court." *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

"This court, being in doubt about its jurisdiction, followed the general rule obtaining in such situations, and . . . sustained the motion to remand." *Key v. West Kentucky Coal Co.*, (W. D. Ky. 1916) 237 Fed. 258.

"The federal courts have almost uniformly denied removal in doubtful cases." *Eddy v. Chicago, etc., R. Co.*, (W. D. Wis. 1915) 226 Fed. 120.

In the *Eighth Circuit* the rule is stated to be that if, on a motion to remand, the question of federal jurisdiction is doubtful the jurisdiction should be retained, and the motion denied. *Strother v. Union Pac. R. Co.*, (W. D. Mo. 1915) 220 Fed. 731, citing *Boatmen's Bank v. Fritzlen*, (C. C. A. 8th Cir. 1905) 135 Fed. 650, 68 C. C. A. 288; *In re Mississippi River Power Co.*, (S. D. Iowa 1917) 241 Fed. 194.

Actual controversy.—To invoke the jurisdiction of a court of justice, it is primarily essential that there be involved a genuine and existing controversy, calling for present adjudication as involving present rights, and although a case may have originally presented such a controversy, if before decision it has, through act of the parties or other cause, lost that essential character, it is the duty of the court, upon the fact appearing, to dismiss it. *Southern Pac. Co. v. Eshelman*, (N. D. Cal. 1914) 227 Fed. 928.

Petition for removal not filed in time.—Where a motion to remand was made on the sole ground that there was no removable separable controversy, the court found it unnecessary to consider that ground, but remanded the case because the petition for removal was not filed in time. *Waverly Stone Co. v. Waterloo, etc., R. Co.*, (N. D. Iowa 1917) 239 Fed. 561.

Delay in filing transcript.—A case will not be remanded on account merely of delay in filing a transcript in the federal court, where such delay is not made one of the grounds for the motion to remand. *Nelson v. Black Diamond Min. Co.*, (W. D. Ky. 1916) 237 Fed. 264.

In *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Iowa 1917) 239 Fed. 561, the court remanded a cause partly because a copy of the record was not filed until after a delay of more than

three months, no excuse for the delay being shown, although the plaintiff's motion to remand was based solely upon the ground that there was no separable controversy.

Elimination of ground of removal.—

Where a suit was brought in a state court for infringement of a registered trademark and removed to the federal court because a federal question was involved, and in the federal court the complainant amended his bill, omitting all mention of the registered trademark, and alleged unfair competition, the court denied defendant's motion to dismiss and granted complainant's motion to remand the cause to the state court. *Fischer v. Star Co.*, (S. D. N. Y. 1915) 227 Fed. 955.

Where damages exceeding the jurisdictional amount for removal were laid in one cause of action in a complaint and below the jurisdictional amount in the other cause of action there stated, and after removal the federal court sustained a demurrer to the first cause of action without leave to amend, the court *suo motu* thereupon remanded the case to the state court as to the remaining cause of action. *Jones v. Western Union Tel. Co.*, (S. D. Cal. 1916) 233 Fed. 301.

Reduction of amount in controversy.—

In *Jellison v. Krell Piano Co.*, (E. D. Ky. 1917) 246 Fed. 509, a suit for the recovery of \$2,900 for services and to enjoin violation of a copyright was removed for diversity of citizenship on a petition alleging that the matter in dispute exceeded \$3,000. In the federal court the action for injunction was dismissed on plaintiff's motion, leaving a suit to recover only \$2,900. Upon such dismissal and because the suit as it then stood could not have been removed, a motion to remand was made. Upon much consideration the motion was denied, the court following *Kirby v. American Soda Fountain Co.*, (1904) 194 U. S. 141, 24 S. Ct. 619, 48 U. S. (L. ed.) 911, and the following two cases in the Circuit Court of Appeals for the same circuit: *Hayward v. Nordberg Mfg. Co.*, (C. C. A. 6th Cir. 1908) 85 Fed. 4, 54 U. S. App. 639, 29 C. C. A. 438; *Riggs v. Clark*, (C. C. A. 6th Cir. 1896) 37 U. S. App. Div. 626, 71 Fed. 560, 18 C. C. A. 242, although the court found it "difficult to reconcile the Soda Fountain Case with the Seeligson and Torrence Cases," the latter two cases being *Texas Transportation Co. v. Seeligson*, (1887) 122 U. S. 519, 7 S. Ct. 1261, 30 U. S. (L. ed.) 1150, and *Torrence v. Shedd*, (1892) 144 U. S. 527, 12 S. Ct. 726, 26 U. S. (L. ed.) 528.

Parties collusively made or joined.—

Friendly suit.—In *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759, where it was contended that jurisdiction of certain suits was lacking because they were collusive, the court said: "In

argument it is urged with considerable insistence that the court has before it a case squarely within the provisions of sections 19 and 20, and particularly the latter, of the act of October 15, 1914. There is no evidence of collusion between the parties in this case; that the original parties may be friendly antagonists is not, however, improbable. Counsel's surmise may be correct, but something more than this is necessary to make their 'collusion' reprehensible."

Suit not within original federal jurisdiction in the particular district.—In *American Oil, etc., Co. v. Western Gas Constr. Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 505, affirming an order of the court below setting aside the service of summons, in a case removed from a New York court, the plaintiff was a New Jersey corporation and the defendant was an Indiana corporation. After observing that the case was not removable at all, since neither of the parties resided in New York, the court said: "But this objection may be waived, and it has been waived by the defendant by virtue of its petition to remove, and by the plaintiff by virtue of its appearance to contest the motion to set aside service of process. If it had not intended to waive the objection as to jurisdiction, it should have moved to remand. *In re Moore*, (1908) 209 U. S. 490, 28 S. Ct. 585, 706, 52 U. S. (L. ed.) 904, 14 Ann. Cas. 1164."

Where jurisdiction of the federal court by a removal was sustainable only on the ground of diverse citizenship, but neither of the parties is a citizen and resident of the state where the suit was brought, a motion to remand by the plaintiff, who appeared specially for the purpose of the motion, and had not appeared generally or otherwise waived the lack of jurisdiction over the parties, was granted. *Peninsula Lumber Co. v. Royal Indemnity Co.*, (D. C. Ore. 1916) 237 Fed. 297, holding that this ruling was necessitated by the decision in *Ex p. Wisner*, (1906) 203 U. S. 449, 27 S. Ct. 150, 51 U. S. (L. ed.) 264, which, in the opinion of the court, had not been overruled by later decisions.

In *Doherty v. Smith*, (S. D. N. Y. 1915) 233 Fed. 132, where nonresident citizen plaintiffs sued nonresident citizen defendants and the latter removed the case for diverse citizenship, it was remanded on motion of the plaintiffs.

In *Jackson v. William Kenefick Co.*, (S. D. N. Y. 1913) 233 Fed. 130, the plaintiff, an alien, sued two citizens and residents of Oklahoma in the New York Supreme Court. The defendants removed for diverse citizenship, but on motion of the alien plaintiff the court remanded the case on the authority of *Kamenicky v. Catterall Printing Co.*, (S. D. N. Y. 1911) 188 Fed. 400, and *Odhner v. Northern Pac.*

R. Co., (S. D. N. Y. 1910) 188 Fed. 507, both of which cases were in the same circuit.

In *Ivanoff v. Mechanical Rubber Co.*, (N. D. Ohio 1916) 232 Fed. 173, an action in an Ohio state court removed to the federal court for that district, a motion by the plaintiff to remand the case was granted, Clarke, J., saying: "The plaintiff being an alien and the defendant a nonresident of this district, because organized under the laws of New Jersey, this case could not have been commenced in this court."

Although only one of the plaintiffs in an action was a resident of the state and federal district, the action was removable to that district on the ground of diverse citizenship, over the objection of the nonresident plaintiff, where the action was "to enforce . . . claim to . . . real or personal property within" the district as provided in Judicial Code, § 57, 1912 Supp., p. 155. *Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co.*, (D. C. Idaho 1915) 228 Fed. 528.

Where the plaintiff in an action in a New York court against a New Jersey corporation did not allege his citizenship or residence, and the defendant appeared and answered generally and removed the case upon a petition alleging that the plaintiff was a citizen of New York, it had no right to object to being sued in that district when it developed on the trial that the plaintiff was an alien. *Sawickas v. Singer Mfg. Co.*, (E. D. N. Y. 1917) 241 Fed. 600.

"Where fraudulent joinder is charged in the petition, for the purpose of denying the petitioner the right of the federal court, and issue is taken by plaintiff upon the charge made in the petition, the issue thus raised forms the basis upon which the proper forum is to be determined. . . . Issue having been taken upon the charge of fraudulent joinder, and affidavits being submitted by the respective parties, that issue must be determined by this court." *Deutsch v. Alaska Gastineau Min. Co.*, (W. D. Wash. 1915) 237 Fed. 215.

"No denial of any of the allegations of the petition for removal was in any manner made by the plaintiff, and they must be taken as true. *Atlanta, etc., R. Co. v. Southern R. Co.*, [C. C. A. 6th Cir. 1907] 153 Fed. 122, 126, 82 C. C. A. 256, 11 Ann. Cas. 766; *Dishon v. Cincinnati, etc., R. Co.*, [C. C. A. 6th Cir. 1904] 133 Fed. 471, 66 C. C. A. 345." *Nelson v. Black Diamond Min. Co.*, (W. D. Ky. 1916) 237 Fed. 264, a case of removal on a petition alleging diverse citizenship and fraudulent joinder of a codefendant.

In *Hough v. Societe Electrique Westinghouse de Russie*, (S. D. N. Y. 1916) 231 Fed. 341, the court said that upon the issue of fraudulent joinder to prevent removal, the defendant must show more

than that no relief could be granted in the state court against the party alleged to have been fraudulently joined. He must show that the plaintiff could not reasonably suppose that such relief could be given, but, upon proof of that fact, "it would necessarily follow that the joinder was fraudulent; but it is irrelevant that the plaintiff's motive was to prevent removal, provided he supposed that he had an honest chance to procure judgment against" the party.

"It may reasonably be presumed . . . where defendants manifestly not jointly liable are nevertheless joined, that the act of joinder was not an act of good faith, but was done for some ulterior purpose, and I take it that such an act could not well be made the basis for resisting removal." *Rountree v. Mt. Hood R. Co.*, (D. C. Ore. 1916) 228 Fed. 1010.

In *Trana v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 228 Fed. 824, the evidence taken upon an issue raised by a petition for removal charging fraudulent joinder showed that the nonresident petitioning defendant's liability, if any, did not arise out of the same transaction as the alleged liability of the local defendant; that the cause of action against the local defendant, if any, was *ex delicto*, whereas the liability, if any, of the nonresident petitioning defendant was *ex contractu*; and that under the decisions of the state Supreme Court construing the state statute the two actions could not be joined. Therefore a motion to remand was denied.

In *Rountree v. Mt. Hood R. Co.*, (D. C. Ore. 1916) 228 Fed. 1010, where the nonresident railroad company was joined with its resident general manager, Early, and a removal was had on a petition alleging fraudulent joinder, a motion to remand was granted.

In *Deutsch v. Alaska Gastineau Min. Co.*, (W. D. Wash. 1916) 237 Fed. 215, which was an action for damages for personal injuries brought by a servant against the master and another alleged to be the master's general foreman, the case was removed on a petition alleging a fraudulent joinder of defendants, quoted in the opinion, but the court, after consideration of affidavits presented on both sides of the issue, remanded the case.

In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, it was held, upon consideration of proof by affidavits filed by defendant, that a resident corporation had been fraudulently joined with a foreign corporation as defendant, the plaintiff having knowledge that the said resident corporation could not be made liable in the action, and plaintiff's motion to remand on the ground of want of diverse citizenship was denied by the court.

Affidavits may be used and considered by the court in determining, on a motion

to remand, whether a defendant was fraudulently joined to prevent removal, as alleged in the petition for removal. *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009.

How question of jurisdiction raised and determined.—An averment in the petition for removal that the amount in controversy exceeds \$3,000 must be taken as admitted if no issue is made thereon. Port of *Seattle v. Oregon, etc., R. Co.*, (W. D. Wash. 1917) 242 Fed. 986.

Order of court ex mero motu.—In *Charroin v. Romort Mfg. Co.*, (W. D. Wash. 1916) 236 Fed. 1011, where a cause was removed on the ground of a federal question, and an amended complaint and demurrer thereto were filed, the federal court after examination of the complaint held that no federal question appeared, and remanded the case, although no motion to remand had been made.

In *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, the court remanded a case because the petition for removal was not filed in time, and the copy of the record was not entered in the federal court in time, although the motion to remand was based solely upon the ground that there was no federal question.

"The motion to remand always raises some question of law arising upon the record, and a 'speaking' motion is about as indefensible as a 'speaking' demurrer." *Berry v. Mobile, etc., R. Co.*, (W. D. Ky. 1915) 228 Fed. 395.

In *Closser v. Strawn*, (W. D. Pa. 1915) 227 Fed. 139, the reason in support of the motion to remand was stated in the motion to be: "That the said District Court sitting in equity has no jurisdiction in the action, neither of the subject-matter thereof nor of the parties thereto, or any of them."

A motion to remand is quoted in full in *Nelson v. Black Diamond Min. Co.*, (W. D. Ky. 1916) 237 Fed. 264.

Reconsidering an order denying a motion to remand.—Though a motion to remand for want of a jurisdictional amount in controversy has been denied by one judge it may be granted at a later stage of the case by another judge, as the court's jurisdiction is always open to challenge. *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

Costs.—Where a case was remanded because the petition for removal was not filed in time nor a copy of the record filed until after a delay of three months beyond the statutory period, with no excuse shown therefor, the remand was at the cost of the removing defendant, although the plaintiff's motion to remand was based solely on another ground not considered by the court. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561.

Vol. IV, p. 378, sec. 6.

Vacating service of process.—Where a foreign corporation defendant upon special appearance removed a case, and upon special appearance in the federal court moved to vacate service of summons, on the ground that it was not doing business in the state, which motion was overruled, the objection to jurisdiction was not waived by filing an answer to the merits which reiterated the objection to the jurisdiction. *Toledo R., etc., Co. v. Hill*, (1917) 244 U. S. 49, 37 S. Ct. 982, 61 U. S. (L. ed.) 982.

Sufficiency of service of process.—"The defendant may raise any question which might have been raised had the writ issued from that court to which the cause has been removed." *Feister v. Hulick*, (E. D. Pa. 1916) 228 Fed. 821.

When the question of sufficiency of service of process upon a defendant in the state court is properly raised by him in the federal court after removal, the latter court will determine for itself whether jurisdiction was acquired over him, and in this respect is not bound by the state court decisions. *Hudson Nav. Co. v. Murray*, (D. C. N. J. 1916) 236 Fed. 419; *Feister v. Hulick*, (E. D. Pa. 1916) 228 Fed. 821.

"If actions are started and removed into this court, the sufficiency of the service under the state law is still to be tested by the necessities required to give jurisdiction in an action instituted at the outset in the federal court. *Goldey v. Morning News*, (1895) 156 U. S. 518, 522, 15 S. Ct. 559, 39 U. S. (L. ed.) 517." *Vitkus v. Clyde Steamship Co.*, (E. D. N. Y. 1916) 232 Fed. 288, 289.

Waiver of objection.—In *Texas, etc., R. Co. v. Bigger*, (1915) 239 U. S. 330, 36 S. Ct. 127, 60 U. S. (L. ed.) 310, affirming (C. C. A. 5th Cir. 1914) 218 Fed. 990, 133 C. C. A. 673, the railroad company, a federal corporation, was sued in the District Court of Bexar county, Texas, for personal injuries suffered by the plaintiff, a passenger. On defendant's petition the case was removed to the federal court for the western district of Texas, where an amended complaint was filed, suggesting Bigger's death, and his wife and children were made parties plaintiff; the defendant demurred generally, answered to the merits, and afterward, by leave of court, amended the answer, so that the latter contained a general demurrer, a general denial of the allegations, and set up special matters in defense, but "it contained no plea or exception to the jurisdiction in the court, state or federal." The case was continued and set for trial upon motion of defendant, which then filed a second amended answer, in which it set up that it was incorporated under an Act of Congress, had its domicile in

Dallas, Texas, that no part of its road was in Bexar county, and the action was improperly brought in the latter county, and the court was without jurisdiction to try it, it being "one arising under and involving damages for personal injury." Insufficiency of the petition in law was also alleged, and there was a general denial of the allegations of the petition, besides special matters of defense. A judgment for plaintiff was affirmed by the Circuit Court of Appeals, and by the Supreme Court.

Defendant privileged from service of process.—In *Feister v. Hulick*, (E. D. Pa. 1916) 228 Fed. 821, the defendant, a nonresident of Philadelphia, was the driver of an automobile which struck and killed the plaintiff's husband. He was arrested and held to answer before a coroner's jury of inquest, and was discharged at the inquest. After he had left the building in which the inquest was held he was served with a summons in the present case which had issued out of one of the courts of common pleas in and for Philadelphia county. Having removed the case, he moved in the federal court to set aside the service of summons, and the motion was granted.

Amendment by substitution of plaintiff.—In *Roman v. Lehigh Valley Coal Co.*, (E. D. N. Y. 1917) 241 Fed. 595, the plaintiff, a New York administrator, sued a Pennsylvania corporation in a court of New York to recover under a Pennsylvania statute for the death of his decedent in that state. The defendant appeared generally and removed the action on the ground of diverse citizenship. In the federal court the defendant answered to the merits. It was held that he thereby waived objection to the maintenance of the action in that court, and precluded himself from objecting to the allowance of an amendment by substituting an alien plaintiff for the citizen administrator.

Vol. IV, p. 378, sec. 7.

Writ of certiorari issued.—In *State improvement Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884, an application for removal was resisted, and a hearing was had thereon, whereupon the state court entered an order that the petition be denied. The federal court, upon application of the petitioner for removal, issued a writ of certiorari directing the state court to certify the records and proceedings in the cause, which was accordingly done.

Vol. IV, p. 380, sec. 8.

Liberal construction.—The view has been taken that, considering the primary purpose of this provision and the comprehensive terms in which it is couched, it should receive a liberal construction, with a view to giving effect to the legis-

lative intent. "Otherwise," it is said, "a party having a local cause of action clearly falling within federal jurisdiction could not prosecute it in a federal court, for the reason that he could not bring his adversary into the only court having jurisdiction of the subject matter." Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co., (D. C. Idaho 1915) 228 Fed. 528.

On service by publication the court is without power to enforce a personal judgment. *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Where the action, taken as a whole, is not one which could be determined by the court so as to give the plaintiff the full and complete relief he seeks, without rendering a personal judgment, or decree against an absent nonresident defendant, and by reason of the nonresidence of the plaintiff the federal court has no jurisdiction on the ground of diverse citizenship alone, the action cannot be maintained under this section upon service by publication. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254.

Judgments affecting the particular property only may be entered, unless the defendants are served with process in the district or voluntarily submit themselves to the jurisdiction of the court. *Dutton v. Waycross First Nat. Bank*, (S. D. Fla. 1917) 244 Fed. 236.

Residence in the district.—"A suit to establish a lien upon or claim to property under section 57 of the Judicial Code may be maintained in the district of the state where the property is situated, though neither plaintiff nor defendant is a resident thereof." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

To what suits applicable.—*Chose in action*.—In *Wabash R. Co. v. West Side Belt R. Co.*, (W. D. Pa. 1916) 235 Fed. 645, dismissing a bill for want of jurisdiction within this section, the court said: "The property in question is a chose in action, a debt owing by the West Side Belt, a citizen of this district, to the Wabash Company, nonresident defendant. The proceeding is therefore an attempt to establish what might be called an attachment lien, or equitable charge upon the moneys in the hands of the West Side Belt Company to answer the debt of an absent defendant."

A plenary suit by a trustee in bankruptcy cannot be instituted under this section against a debtor of the bankrupt and the bankrupt's assignee of the debt, in order to set aside the assignment and recover the amount of the debt as an alleged preference. The trustee's right to the debt may be personal property, but it is not personal property of such a character within the district as to give the court exclusive dominion and control of it; hence his chose in action is not personal

property within the district. *Murphy v. Ford Motor Co.*, (S. D. Ohio 1916) 241 Fed. 134.

Suit for debt and accounting.—A suit against devisees and executors of a deceased tenant in common, who was trustee of the plaintiffs, who were his co-tenants, the decedent not having accounted, and the suit being in substance one for debt and accounting, was not maintainable in a federal District Court in Texas wherein the land was situated, where neither plaintiffs nor defendants were residents or citizens of the state. *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Patent rights are not such tangible property within the district as justifies the court in proceeding against parties who are citizens and residents of other states and other districts, to remove a cloud upon the title to the same. *Standard Gas Power Co. v. Standard Gas Power Co.*, (N. D. Ga. 1915) 224 Fed. 990.

But in another case, where the plaintiff had entered into a contract to invent, design and construct a certain line of machinery, it was held that the District Court has jurisdiction of a suit to quiet title to certain manufactured machines, patents, application for patent, drawings, patterns and specifications in which absent defendants claimed and asserted an ownership and proprietary interest. *Burpee v. Guggenheim*, (W. D. Wash. 1915) 226 Fed. 214.

Illegal stock or bonds.—Illegal stock may be considered as casting a cloud upon the equitable title or the interest which genuine stockholders have, by virtue of their shares of stock, not in the stock, but in the property of the corporation, since it impairs that title or interest, and in a suit the object of which is to remove a cloud upon the equitable title of the holders of the genuine stock to the property of the corporation, where such property is not within the district, substituted service cannot be had under this section. *Hudson Nav. Co. v. Murray*, (D. C. N. J. 1916) 233 Fed. 466.

A federal court has jurisdiction under this provision to determine whether illegal bonds have been issued by a corporation, and, if so, by a proper decree to remove the cloud cast upon the title of bondholders. *Thompson v. Emmett Irrigation Dist.*, (C. C. A. 9th Cir. 1915) 227 Fed. 560, 142 C. C. A. 192.

Where the purpose of a suit is to obtain a decree requiring the surrender of stock certificates and directing their cancellation it is not material that the certificates are within the district, the question being whether the property, upon the title of which, it is alleged, the invalid issue of stock creates a cloud, is within the district. *Hudson Nav. Co. v. Murray*, (D. C. N. J. 1916) 233 Fed. 466.

An action by stockholders against a nonresident mining company asking that a receiver be appointed to take over and manage the entire business of the corporation, whose property is located in the district of the plaintiffs, until the question as to which of two groups of individuals were elected directors can be determined by a competent tribunal and that the result of the election be determined by the court, has been held to be one involving the status of property within the district within the meaning of this provision. *Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co.*, (D. C. Idaho 1915) 228 Fed. 528.

Easement in land.—An action by a telegraph company, a citizen of New York, against a railroad corporation, a citizen of Kentucky, involving the right of the telegraph company to occupy the right of way of the railroad company in another state, is maintainable in the federal court for the district in which the property is located, the claim being regarded as one to an easement in land, or right to occupy land. *Western Union Tel. Co. v. Louisville, etc., R. Co.*, (N. D. Ga. 1915) 229 Fed. 234.

Claim to real estate of decedent.—In *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561, a suit in equity was brought by citizens of Louisiana to establish their claim to the entire estate of a decedent, as heirs and next of kin, against citizens of Georgia claiming in their own behalf the same entire estate. The suit was brought in the southern district of Georgia where all the defendants resided, and where a part of the estate was situated. The court held that it was in part, at least, a suit to enforce a legal or equitable claim to real property within that district, and therefore cognizable by the federal court for that district; and that an amendment of the bill was allowable by making the permanent administrators of the decedent parties defendant, although they were residents of the northern district, but citizens of Georgia; that said administrators were proper, if not necessary parties, whose addition by amendment was authorized by Judicial Code, § 52, and by Equity rule 37 (superseding the old rule, No. 49) and by the new Equity rule 28; and that, as the adverse claims of the defendants living in the southern district was the substantial thing to which the jurisdiction of the court initially attached, the addition of the permanent administrators as parties did not divest the court of its jurisdiction.

Removed cases.—This provision in its terms applies only to suits commenced in a District Court and is said to be inapplicable to a suit begun in a state court and removed to a federal court. Therefore the fact that the method of substi-

tuted service provided for in a state statute does not conform to that provided for in this section or that the state statute permits substituted service in cases for which this section has made no provision, does not require that a federal court, when a case is removed to it, must set aside the service where it is otherwise perfectly valid and in harmony with the requirements of the Federal Constitution and the principles of natural justice and would justify a binding decree in the state court. *Hudson Nav. Co. v. Murray*, (D. C. N. J. 1916) 236 Fed. 419.

Enforcement of liens.—"The lien must have existed anterior to the suit," and not one caused by the institution of the suit itself. *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Diversity of citizenship.—"The primary purpose of the statute was to enable federal courts to acquire jurisdiction of the persons of nonresident parties whose presence might be necessary to an adjudication of local actions touching the status of property within the district, in cases depending for federal jurisdiction upon diversity of citizenship." *Consolidated Interstate Callahan Min. Co. v. Callahan Min. Co.*, (D. C. Idaho 1915) 228 Fed. 528.

Effect of judgment.—Where, in an action on a promissory note, the note was not in the district, either when the suit was commenced or the appearance order was served on the defendants, it was held that it could not be deemed constructively within that district, upon the theory that its situs followed the legal holder, and therefore no jurisdiction was acquired as to defendants who did not appear and a decree against them was void and subject to collateral attack on the ground of want of jurisdiction. *Pensacola State Bank v. Thornberry*, (C. C. A. 6th Cir. 1915) 226 Fed. 611, 141 C. C. A. 367.

There may be a waiver by a defendant of the objection that a proceeding was not commenced in the proper district by his appearance and the filing of a motion to dismiss the case on the merits. *Western Union Telegraph Co. v. Louisville, etc., R. Co.*, (N. D. Ga. 1915) 229 Fed. 234.

Vol. IV, p. 387, sec. 3.

Service of process.—This section was intended to place receivers upon the same plane with railroad companies, both as respects their liability to be sued for acts done while operating a railroad, and as respects the mode of service. See *Lamb v. Whitman*, (1916) 17 Ga. App. 687, 87 S. E. 1095; *Gursky v. Blair*, (1916) 218 N. Y. 41, 112 N. E. 431, L. R. A. 1915F 359.

Acts and transactions in carrying on business.—An action for damages against a receiver of a steamship company for negligence resulting in a collision may be brought without previous leave of court.

Berwind-White Coal Min. Co. v. Eastern Steamship Corp., (S. D. N. Y. 1916) 228 Fed. 726.

Leave to sue.—An order made denying a request by a landlord for permission to sue a receiver to recover immediate possession of premises, it being claimed by him that the lease is subject to forfeiture and that he is entitled to have that right determined with all reasonable speed, is a final order from which an appeal may be taken. *Odell v. H. Batterman & Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 292, 138 C. C. A. 534, *reversing* (E. D. N. Y. 1914) 217 Fed. 305.

The institution of a foreclosure suit in a federal court against an interstate railroad company and the appointment of a receiver therein did not abate an action for mandamus in a state court to compel the railroad company to remove one of its bridges over a navigable stream on the ground that it was a public nuisance, and under this provision of the federal statute it would be good practice to bring in the receiver as a defendant. *Kaw Valley Drainage Dist. v. Missouri Pac. R. Co.*, (1916) 99 Kan. 188, 161 Pac. 937.

Garnishment of receiver.—Where, pending an appeal from a judgment for plaintiff in an action wherein a federal receiver was served with process of garnishment, the parties stipulated for the sale of property in the garnishee's hands, the proceeds to be subject to the direction of the court, the trial court, as ancillary to the original judgment, had jurisdiction to enforce the stipulation by directing payment to the plaintiff from the proceeds, and the garnishee having acted on the stipulation could not question such right of the court in the premises. *Lamb v. Whitman*, (1916) 19 Ga. App. 27, 90 S. E. 736.

A state court has no jurisdiction to grant, by injunction against the receiver of a railroad company appointed by a federal court, in a suit brought without leave of the federal court, specific performance of an executory contract made by the railroad company, which the receiver has not assumed. *Dickinson v. Willis*, (S. D. Ia. 1916) 239 Fed. 171.

Vol. IV, p. 393, sec. 649.

Circuit Courts were abolished and their powers and duties imposed upon District Courts by Judicial Code, §§ 289, 291. This section is therefore now applicable to the present District Courts. *Phoenix Securities Co. v. Dittiner*, (C. C. A. 9th Cir. 1915) 224 Fed. 892, 140 C. C. A. 892; *Gord Pine Lumber Co. v. Duke*, (C. C. A. 5th Cir. 1916) 229 Fed. 714, 144 C. C. A. 124; *Chautauqua Institute v. Zimmerman*, (C. C. A. 6th Cir. 1916) 233 Fed. 371, 147 C. C. A. 307; *McCoach v. Continental Passenger R. Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 976, 147 C. C. A.

650; *Calaf v. Fernandez*, (C. C. A. 1st Cir. 1917) 239 Fed. 795, 152 C. C. A. 581.

"Section 566 of the Revised Statutes requiring that actions at law in the District Courts be tried by jury, has no application to the District Courts as now organized." *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Vol. IV, p. 398, sec. 5.

Only final decisions reviewable.—The finality essential to sustain an appeal is not wanting in an order which denies a petition by which a witness, who offered in evidence in an equity suit certain exhibits owned by him that the court later ordered impounded in the custody of the clerk, seeks to enjoin on constitutional grounds the use of such exhibits before the grand jury as a basis for an indictment for perjury alleged to have been committed in such suits. *Pelzman v. U. S.*, (1918) 247 U. S. 7, 38 S. Ct. 417, 62 U. S. (L. ed.) ____.

Moot questions.—In *U. S. v. Hamburg-Amerikanische, etc.*, (1916) 239 U. S. 466, 36 S. Ct. 212, 60 U. S. (L. ed.) 387, which was an appeal from a judgment of the District Court holding an agreement of ocean steamship companies including British and German, in violation of the Anti-Trust Act, it was held that the merits of the case would not be considered in the view of the European war which made the question a moot one.

"On this direct appeal a reversal is sought of a decree below which dismissed the bill for want of jurisdiction. There is a motion to dismiss on the ground that 'the questions involved upon this appeal are moot questions . . . for the reason that subsequent to the dismissal of the bill herein by the lower court the appellant as plaintiff instituted in the Supreme Court of the state of New York, county of New York, an action upon the same alleged cause of action against the same defendants and that such action in the Supreme Court of the State of New York was heard and determined and that a final judgment upon the merits therein was rendered dismissing the complaint filed in said action as against this appellee.' But as our power to review is limited to the question of jurisdiction alone and as the ground of the motion obviously involves the defense of 'the thing adjudged,' going to the merits, the motion to dismiss is overruled." *Male v. Atchison, etc., R. Co.*, (1916) 240 U. S. 97, 36 S. Ct. 351, 60 U. S. (L. ed.) 544.

APPEALS DIRECT TO SUPREME COURT

Clause 1. In Any Case in Which the Jurisdiction of the Court Is in Issue (p. 399)

When jurisdiction is in issue—In general.—Whether the District Court acquired

jurisdiction over the defendant may be reviewed by direct appeal. *G. & C. Merriam Co. v. Saalfeld*, (1916) 241 U. S. 22, 36 S. Ct. 477, 60 U. S. (L. ed.) 868.

Under this section the federal Supreme Court had jurisdiction to review an order quashing a summons because served on a nonresident while he was returning from the court room after testifying in a case in which he was a party. *Stewart v. Ramsay*, (1916) 242 U. S. 128, 37 S. Ct. 44, 61 U. S. (L. ed.) 192, *citing* *G. & C. Merriam Co. v. Saalfeld*, (1916) 241 U. S. 22, 36 S. Ct. 477, 60 U. S. (L. ed.) 868, to the point that it is well settled "that a direct writ of error lies in such a case."

Sufficiency of service of process upon a foreign corporation defendant makes a question of jurisdiction reviewable under this clause. *Philadelphia, etc., R. Co. v. McKibbin*, (1917) 243 U. S. 264, 37 S. Ct. 280, 61 U. S. (L. ed.) 710.

In *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) —, about eighteen months after a default judgment against the plaintiff in error, the marshal's return having been previously amended by order of the court so as to show personal service upon the defendant (plaintiff in error), the plaintiff in error filed an application to set aside the judgment on the ground of want of jurisdiction by proper service of summons, that the marshal's amended return was false, and that the court had no power to order the marshal to amend his return. Upon hearing the application, with accompanying affidavits, the court refused to set aside the former judgment and overruled the application. While conceding that the judgment overruling the application was a final judgment and reviewable in the proper court, the federal Supreme Court dismissed a writ of error brought under Judicial Code, § 238, 1912 Supp., p. 231, for the reason that "no question is made concerning the jurisdiction of the court to entertain the proceeding to set aside the former judgment, and that the real controversy arises from the attack upon the authority of the court to order an amendment of the marshal's return, and to render the original judgment."

A question of jurisdiction of the court below, within the meaning of the statute, "is, whether, as a federal court, it had power to entertain the cause." *Male v. Atchison, etc., R. Co.*, (1916) 240 U. S. 97, 36 S. Ct. 351, 60 U. S. (L. ed.) 544.

Objection to a libel in rem against a vessel on the ground that it was immune to proceedings in any court by reason of being under requisition by the Italian government for the purpose of transporting military supplies, went equally to the jurisdiction of any court, state or federal, and appeal from a decree was properly

taken to the Circuit Court of Appeals. *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 909.

Objection that an indictment does not charge a crime against the United States goes only to the merits of the case and not to the jurisdiction of the court. *Lamar v. U. S.*, (1916) 240 U. S. 60, 36 S. Ct. 255, 60 U. S. (L. ed.) 526.

Other illustrations.—*American Well Works Co. v. Layne, etc., Co.*, (1916) 241 U. S. 257, 36 S. Ct. 585, 60 U. S. (L. ed.) 987, reversing an order dismissing a suit for want of jurisdiction on the ground that the state court from which the case had been removed was without jurisdiction because the cause of action arose under the patent laws.

Bankers' Trust Co. v. Texas, etc., R. Co., (1916) 241 U. S. 295, 36 S. Ct. 569, 60 U. S. (L. ed.) 1010, affirming a decree dismissing, for want of jurisdiction, a suit to foreclose a mortgage by a railroad company incorporated by an Act of Congress, jurisdiction of the suit being forbidden by the Act of Jan. 28, 1915, ch. 22, § 5, 1916 Supp., p. 137.

Latta, etc., Constr. Co. v. The Raithmoor, (1916) 241 U. S. 166, 36 S. Ct. 514, 60 U. S. (L. ed.) 937, reversing a decree which dismissed, for want of jurisdiction, a libel in rem in so far as it sought to recover for the damages negligently inflicted by a colliding vessel upon an unfinished pier intended to support a government beacon.

G. & C. Merriman Co. v. Saalfeld, (1916) 241 U. S. 22, 36 S. Ct. 477, 60 U. S. (L. ed.) 868, affirming a decree quashing the service of process against a nonresident by substituted service, and setting aside all proceedings based thereon.

Pinel v. Pinel, (1916) 240 U. S. 594, 36 S. Ct. 416, 60 U. S. (L. ed.) 817, affirming a decree dismissing a bill because the amount in controversy was insufficient to give the court jurisdiction.

Cuyahoga River Power Co. v. Akron, (1916) 240 U. S. 462, 36 S. Ct. 402, 60 U. S. (L. ed.) 743, reversing a decree dismissing, for want of jurisdiction, a bill by a hydro-electric power company to prevent a municipality from appropriating the waters of a stream, the Supreme Court holding that the bill presented a question arising under the Federal Constitution.

Lamar v. U. S., (1916) 240 U. S. 60, 36 S. Ct. 255, 60 U. S. (L. ed.) 526, a writ of error to review a conviction for false personation of a federal officer, the writ of error being dismissed on the ground that the contention of plaintiff in error that the construction of the Constitution was involved and that his constitutional rights were violated was without foundation.

Rogers v. Hennepin County, (1916) 239 U. S. 621, 36 S. Ct. 217, 60 U. S. (L. ed.) 469, affirming a decree which dismissed a bill in a suit to enjoin the collection of taxes, there being an insufficient amount in controversy.

Glenwood Light, etc., Co. v. Mutual Light, etc., Co., (1915) 239 U. S. 121, 36 S. Ct. 30, 60 U. S. (L. ed.) 174, holding that the court below erred in dismissing a bill on final hearing on the ground that the jurisdictional amount of \$3,000 was not involved.

Equivalent of certificate.—A recital in the order of the district judge allowing a writ of error that the plaintiff's petition "had been dismissed by the judgment of this court upon consideration solely of the question of this court's jurisdiction of the action," was held sufficient to take the place of the certificate required by the Judicial Code, § 238. *McAllister v. Chesapeake, etc., R. Co.*, (1917) 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735, citing *Excelsior Wooden Pipe Co. v. Pacific Bridge Co.*, (1902) 185 U. S. 282, 22 S. Ct. 681, 46 U. S. (L. ed.) 910, and *Herndon-Carter Co. v. Norris*, (1912) 224 U. S. 496, 32 S. Ct. 550, 56 U. S. (L. ed.) 857.

Separate appeals.—If a party prosecute a direct appeal to the Supreme Court and also a writ of error from the Circuit Court of Appeals the latter court cannot compel an election of which method shall be pursued on penalty of dismissing the writ of error. *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912.

Review limited to question of jurisdiction.—Where the District Court dismissed an action against a state bank commissioner and the surety on his bond on the ground that the action was against a state in violation of the 11th amendment, the questions whether the state statute made the surety liable, or whether the plaintiff's pleading or the case was defective in any particular, the federal Supreme Court was not required to decide, since upon neither question was the judgment of the District Court defensively invoked. *Johnson v. Lankford*, (1918) 245 U. S. 541, 38 S. Ct. 203, 62 U. S. (L. ed.) —.

"Such appeals or writs of error do not bring here the merits of the controversy, and impose upon this court the single duty of determining whether the district court had jurisdiction of the case." *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) —.

Decision right, but for wrong reason.—Where the District Court erred in dismissing an action on the ground that it was an action against a state, its judgment was nevertheless affirmed where the record showed that the parties were cit-

izens of the same state, and no constitutional or other federal question was involved. *Martin v. Lankford*, (1918) 245 U. S. 547, 38 S. Ct. 547, 62 U. S. (L. ed.) —.

Clauses 4-6. Questions Under the Constitution and Treaties of the United States (p. 405)

Review not limited.—If the United States Supreme Court has jurisdiction to review a case originating in a federal District Court on the ground that a constitutional question is in issue, it may determine "all questions involved in the case, including questions of state law, irrespective of the disposition that may be made of the federal question, or whether it be found necessary to decide it at all. *Siler v. Louisville, etc., R. Co.*, (1917) 213 U. S. 175, 191, 29 S. Ct. 451, 53 U. S. (L. ed.) 753, 757; *Ohio Tax Cases*, (1914) 232 U. S. 576, 586, 34 S. Ct. 372, 58 U. S. (L. ed.) 738, 743." *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, Ann. Cas. 1917E 88. To the same point is *McCurdy v. U. S.*, (1918) 246 U. S. 263, 38 S. Ct. 289, 62 U. S. (L. ed.) —.

If the decree of the District Court is a general one on the merits and the bill charged a violation of the Constitution of the United States a direct appeal to the Supreme Court brings up the whole case. *Northwestern Laundry v. Des Moines*, (1916) 239 U. S. 486, 36 S. Ct. 206, 60 U. S. (L. ed.) 396.

Clause 4. Construction or Application of Constitution (p. 406)

In general.—It is expressly provided that appeals and writs of error may be taken direct from a District Court to the Supreme Court in cases involving the construction or application of the Constitution of the United States. *Carolina Glass Co. v. South Carolina*, (1916) 240 U. S. 305, 36 S. Ct. 293, 60 U. S. (L. ed.) 658; *Badders v. U. S.*, (1916) 240 U. S. 391, 36 S. Ct. 367, 60 U. S. (L. ed.) 706.

Income tax.—Where a stockholder sues to enjoin the corporation from paying a tax under the Income Tax Law of 1913 on the ground of its unconstitutionality and the injunction is refused by the District Court a direct appeal lies to the Supreme Court. *Stanton v. Baltic Min. Co.*, (1916) 240 U. S. 103, 36 S. Ct. 278, 60 U. S. (L. ed.) 546.

Habeas corpus cases.—A decision of a federal court denying a writ of habeas corpus has been held to be reviewable by direct appeal to the Supreme Court, where the construction or application of the Constitution of the United States is necessarily involved. *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293.

For other habeas corpus cases taken direct to the Supreme Court see *Kelly v. Griffin*, (1916) 241 U. S. 6, 36 S. Ct. 487, 60 U. S. (L. ed.) 861; *Bingham v. Bradley*, (1916) 241 U. S. 511, 36 S. Ct. 634, 60 U. S. (L. ed.) 1136; *Abbott v. Brown*, (1916) 241 U. S. 606, 36 S. Ct. 689, 60 U. S. (L. ed.) 1199; *Frank v. Mangum*, (1915) 237 U. S. 309, 35 S. Ct. 582, 59 U. S. (L. ed.) 969; *Collins v. Johnston*, (1915) 237 U. S. 502, 35 S. Ct. 649, 59 U. S. (L. ed.) 1071; *Ebeling v. Morgan*, (1915) 237 U. S. 625, 35 S. Ct. 710, 59 U. S. (L. ed.) 1151; *Morgan v. Devine*, (1915) 237 U. S. 632, 35 S. Ct. 712, 59 U. S. (L. ed.) 1153; *Henry v. Henkel*, (1914) 235 U. S. 219, 35 S. Ct. 54, 59 U. S. (L. ed.) 203; *Drew v. Thaw*, (1914) 235 U. S. 432, 35 S. Ct. 137, 59 U. S. (L. ed.) 302.

Treaty.—Unless the question raised is substantial the United States Supreme Court will dismiss, for want of jurisdiction, a case brought before it direct from the District Court. *Chin Fong v. Backus*, (1916) 241 U. S. 1, 36 S. Ct. 490, 60 U. S. (L. ed.) 859, wherein an appeal from a judgment of the District Court dismissing a petition for habeas corpus was itself dismissed, it appearing that, while the appellant claimed that a treaty was drawn in question, the facts showed that the question really related to the construction of statutes regulating Chinese immigration and the right of a person of Chinese descent to enter the United States.

Vol. IV, p. 409, sec. 6.

II. FINAL DECISIONS (p. 410)

The jurisdiction of the Circuit Court of Appeals extends to the review only of final decisions, except as provided in the next section 7 now embodied in Judicial Code, § 129, 1912 Supp., p. 195. *Crooker v. Knudsen*, (C. C. A. 9th Cir. 1916) 232 Fed. 857, 147 C. C. A. 51.

When decision is final.—No judgment is final which does not terminate the litigation between the parties on the merits of the case, or on some severable phase thereof, nor until it is entered in a court from which execution can issue. *Crooker v. Knudsen*, (C. C. A. 9th Cir. 1916) 232 Fed. 857, 147 C. C. A. 51.

Part of a decree may be final and part interlocutory for purposes of an appeal. *Historical Pub. Co. v. Jones Bros. Pub. Co.*, (C. C. A. 3d Cir. 1916) 231 Fed. 784, 145 C. C. A. 655, wherein, in a suit to enjoin the infringement of two copyrights, the bill was dismissed as to an alleged infringement, and this was held to be a final decree, although as to the other infringement an interlocutory decree was entered.

An order sustaining a demurrer to a plea of recoupment for a greater amount

than that claimed by the plaintiff, the record not showing any disposition of the issues raised by that plea and a plea of general denial, was not final for the purpose of a writ of error. *Treadwell v. Corker*, (C. C. A. 5th Cir. 1917) 245 Fed. 348, 157 C. C. A. 540.

Order dismissing counterclaim.—In *Economy Fuse, etc., Co. v. Killark Electric Mfg. Co.*, (C. C. A. 8th Cir. 1916) 235 Fed. 120, 148 C. C. A. 614, an order amending an answer by dismissing a counterclaim without prejudice on the motion of the defendant was held not final, and therefore not appealable.

A judgment denying an application to set aside a default judgment, on the ground that the latter was rendered without jurisdiction, the application having been heard on affidavits, was declared to be final and reviewable in the Circuit Court of Appeals, "in view of the nature of the attack made upon the original judgment." *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) —.

Order denying leave to intervene.—"In intervention there are two classes of cases — one class in which the intervention is not indispensable to the preservation or enforcement of the claim of the petitioner, and there the permission to intervene is discretionary with the court; another class in which the petitioner claims a lien upon or an interest in specific property in the exclusive jurisdiction and subject to the exclusive disposition of a court, and his interest therein can be established, preserved, or enforced in no other way than by the determination and action of that court. The petitioner who has a claim of the latter class has an absolute right to intervene in the proceeding in which the court holds the exclusive custody and dominion of the property, permission for him to intervene is not discretionary with the court, and he may review by appeal an order refusing that right." *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448.

A decree on a libel in rem against a ship by which the latter is released from arrest in effect terminates the proceeding against her and is appealable. *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

Decrees in patent suits.—In *Stromberg Motor Devices Co. v. Arnson*, (C. C. A. 2d Cir. 1917) 239 Fed. 891, 153 C. C. A. 19, the complainant filed a bill upon two patents, one to Ahara and one to Richard. The District Court entered a decree sustaining the Ahara patent with the usual directions as to injunction and accounting, and dismissed the bill as to the Richard patent without costs to either party. The complainant appealed from that part of the decree dismissing the

bill as to the Richard patent. It was held that the decree was not final, and the appeal was dismissed.

In habeas corpus.—An order overruling a demurrer to a petition for a writ of habeas corpus and granting the petition is not appealable. But an appeal from an order discharging the petitioner from custody will lie. *Backus v. Yep Kim Yuen*, (C. C. A. 9th Cir. 1915) 227 Fed. 848, 142 C. C. A. 372.

No appeal lies from an order made by the district judge in vacation on the hearing of the issues raised by a petition for the writ of habeas corpus and the return thereto. *Hoskins v. Funk*, (C. C. A. 5th Cir. 1917) 239 Fed. 278, 152 C. C. A. 266.

Order disposing of writ of arrest.—No appeal lies from an order sustaining or dissolving a writ of arrest in a civil action. *Crooker v. Knudsen*, (C. C. A. 9th Cir. 1916) 232 Fed. 857, 147 C. C. A. 51.

III. REVIEW BY CIRCUIT COURTS OF APPEALS "IN ALL OTHER CASES," ETC. (p. 414)

Methods of review.—*An order adjudging one guilty of contempt in violating an injunction decree in a civil suit affecting water rights may be reviewed on appeal, as the judgment "is not primarily punitive in its nature, but it is a judgment in a civil and remedial proceeding, instituted to protect and enforce private rights, and to that end to compel obedience of the decree of the court."* *Hanley v. Pacific Live Stock Co.*, (C. C. A. 9th Cir. 1916) 234 Fed. 522, 148 C. C. A. 288.

V. WHEN DECISIONS OF CIRCUIT COURTS OF APPEALS ARE FINAL (p. 416)

In general.—"The jurisdiction referred to, it has come to be settled, means the jurisdiction of the United States District Court as originally invoked." *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) —.

Jurisdiction depending entirely on diverse citizenship, etc.—Where plaintiff's pleading showed that the federal jurisdiction was invoked solely upon the ground of diversity of citizenship, the appeal was necessarily dismissed. *Hitchman Coal, etc., Co. v. Mitchell*, (1916) 241 U. S. 644, 36 S. Ct. 450, 60 U. S. (L. ed.) 1218, followed in *Eagle Glass, etc., Co. v. Rowe*, (1917) 245 U. S. 275, 38 S. Ct. 80, 62 U. S. (L. ed.) —.

A judgment of the Circuit Court of Appeals is final and not reviewable on writ of error where it was rendered in a case removed from a state court to the federal District Court on a petition setting up diversity of citizenship as the ground of removal without alluding to any other ground. *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) —.

Jurisdiction not depending entirely on diverse citizenship, etc.—A judgment of the Circuit Court of Appeals which was rendered in a case removed from a state court to the federal District Court on a petition containing an allegation that the complaint alleged a cause of action arising under the Interstate Commerce Act, and making that fact, as well as diversity of citizenship, a ground of removal, was reviewable by the federal Supreme Court on writ of error. *Southern Pac. Co. v. Stewart*, (1917). 245 U. S. 562, 38 S. Ct. 203, 62 U. S. (L. ed.) —.

On writ of error to the Circuit Court of Appeals the Supreme Court had jurisdiction to review the whole case where the plaintiff's complaint not only alleged diverse citizenship of the parties, but that certain orders of a state court upon which the defendant relied were void as having been entered without due process of law, in violation of the Federal Constitution, and the contention was insisted upon in both the lower courts. *Chaloner v. Sherman*, (1917) 242 U. S. 455, 37 S. Ct. 136, 61 U. S. (L. ed.) 427, citing *Howard v. U. S.*, (1902) 184 U. S. 676, 681, 22 S. Ct. 543, 46 U. S. (L. ed.) 754, 757.

Where the District Court had jurisdiction of a suit in equity not only on the ground of diverse citizenship, but because the bill was dependent and ancillary and the jurisdiction to entertain it was referable to that invoked in actions at law out of which it arose, which actions were cognizable as arising under a law of the United States, the decree of the Circuit Court of Appeals was appealable to the Supreme Court. *Eichel v. U. S. Fidelity, etc., Co.*, (1917) 245 U. S. 102, 38 S. Ct. 47, 62 U. S. (L. ed.) —.

Under criminal laws.—"A conviction for a criminal although summary contempt is, for the purposes of our reviewing power, a matter of criminal law not within our jurisdiction on error." *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —, dismissing a writ of error.

VI. CERTIFYING QUESTIONS TO SUPREME COURT (p. 418)

The power to certify was enlarged by Judicial Code, § 239. See notes to said section 239, *infra*, p. 1319, citing *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) —.

Form of certificate.—In *Ricaud v. American Metal Co.*, (1918) 246 U. S. 304, 38 S. Ct. 312, 62 U. S. (L. ed.) —, the court decided that "for the purpose of making an end of the litigation, we will proceed to answer the question," but said: "There is no denying that there is much of merit in the objection to the form of this certificate, including the form of the questions, for the reason that the certificate, instead of containing a 'proper

statement of the facts on which the questions and propositions of law arise,' as is required by rule 37 of this court, contains a statement of what is 'alleged and denied' by the parties plaintiff and defendant in their pleadings, with the additional statement that there was evidence 'tending to establish the facts as claimed by each party,' but without any finding whatever as to what the evidence showed the facts to be, and the first question, on which the other two depend, is in terms based entirely on an 'assumed' statement of facts."

"Whole record and cause" brought up.—This was done by certiorari after certification of questions by the Circuit Court of Appeals in *Pennsylvania R. Co. v. Jacoby*, (1916) 242 U. S. 39, 37 S. Ct. 49, 61 U. S. (L. ed.) 165.

VII. REVIEW BY SUPREME COURT ON CERTIORARI (p. 420)

This power is sparingly exercised.—*Houston Oil Co. v. Goodrich*, (1918) 245 U. S. 440, 38 S. Ct. 140, 62 U. S. (L. ed.) —, dismissing at the hearing a writ of certiorari as having been improvidently granted, the court saying: "The record discloses no sufficient reason within the rule long observed why we should review the judgment below. *Forsyth v. Hammond*, 166 U. S. 506, 17 S. Ct. 665, 41 U. S. (L. ed.) 1095."

"As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." *Hamilton-Brown Shoe Co. v. Wolf*, (1916) 240 U. S. 251, 36 S. Ct. 269, 60 U. S. (L. ed.) 629.

When such power will be exercised.—In a trademark infringement case heard on two writs of certiorari, one to the Circuit Court of Appeals for the Fifth Circuit and the other to the same court for the Seventh Circuit, Mr. Justice Pitney said: "No question is raised respecting the propriety of passing upon the questions at issue on a review of decisions rendered upon applications for temporary injunction. Both district courts granted such injunctions, and both Circuit Courts of Appeals reversed upon grounds that went to the merits. These courts differed upon fundamental questions, and it was because of this that the writs of certiorari were allowed, the situation being such that it was deemed proper to allow them before final decrees were made, notwithstanding the general rule to the contrary." *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713.

In *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580, "in view of the general importance of the question of the amount

allowable in its relation to the questions involved in the trustee's appeal," certiorari was granted to review a decree allowing as a provable debt against a bankrupt estate, a part of the damages growing out of the bankrupt's breach of an executory contract.

At what stage of proceedings.—"Except in extraordinary cases the writ is not issued until final decree." *Hamilton-Brown Shoe Co. v. Wolf*, (1916) 240 U. S. 251, 36 S. Ct. 269, 60 U. S. (L. ed.) 629.

A writ of certiorari was dismissed as improvidently granted in *Furness v. Yang-Tsze Ins. Ass'n*, (1917) 242 U. S. 430, 37 S. Ct. 141, 61 U. S. (L. ed.) 409, where the court said: "We should have denied the petition therefor if the facts essential to an adequate appreciation of the situation had then been brought to our attention. Petitions of this character are at the risk of the party making them, and whenever, in the progress of the cause, facts develop which, if disclosed on the application, would have induced a refusal, the court may, upon motion by a party, or ex mero motu, dismiss the writ. *United States v. Rimer*, 220 U. S. 547, 55 L. ed. 578, 31 Sup. Ct. Rep. 596; *State, Malone, Prosecutor, v. Water Comrs.*, 30 N. J. L. 247."

"Directly within the rule announced in" the foregoing case, said the court, a writ of certiorari was dismissed as improvidently granted in *Tyrrell v. District of Columbia*, (1917) 243 U. S. 1, 37 S. Ct. 361, 61 U. S. (L. ed.) 557.

Effect of granting or denying writ.—"It is, of course, sufficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed." Per Mr. Justice Pitney in *Hamilton-Brown Shoe Co. v. Wolf*, (1916) 240 U. S. 251, 36 S. Ct. 269, 60 U. S. (L. ed.) 629.

Hearing and examination.—In *Hamilton-Brown Shoe Co. v. Wolf*, (1916) 240 U. S. 251, 36 S. Ct. 269, 60 U. S. (L. ed.) 629, a suit to restrain infringement of a trademark and unfair competition, the Circuit Court on final hearing dismissed the bill. This decree was reversed by the Circuit Court of Appeals with directions to decree an injunction and an accounting; that court overruling, however, the claim that a trademark right was asserted in the bill and had not been abandoned. Complainant petitioned the Supreme Court for a writ of certiorari to review that decision, which was denied (1909) 214 U. S. 514, 29 S. Ct. 696, 53 U. S. (L. ed.) 1063. Pursuant to the mandate of the Circuit Court of Appeals, the Circuit Court decreed an injunction and a reference for accounting of damages and profits and the master recommended a decree for a stated substantial sum. But

the court adjudged a recovery of \$1 nominal damages, (E. D. Mo. 1912) 192 Fed. 930. Complainant appealed to the Circuit Court of Appeals, which court reversed the decree, with directions that the master's report be confirmed and decree entered against defendant, (C. C. A. 8th Cir. 1913) 206 Fed. 611, 124 C. C. A. 409. The Supreme Court allowed a writ of certiorari, and on the hearing complainant insisted that he had a valid trademark which was infringed by the defendant. Mr. Justice Pitney said: "It is contended that this question is settled otherwise, at least as between these parties, by the decision of the Circuit Court of Appeals on the first appeal, and our refusal to review that decision upon complainant's petition for a writ of certiorari, and that the only questions open for review at this time are those that were before the Court of Appeals upon the second appeal. This, however, is based upon an erroneous view of the nature of our jurisdiction to review the judgments and decrees of the Circuit Court of Appeals by certiorari under sec. 240, Judicial Code, derived from sec. 6 of the Evarts Act of March 3, 1891, ch. 517, 26 Stat. L. 828. . . . The decree that was sought to be reviewed by certiorari at complainant's instance was not a final one, a fact that of itself alone furnished sufficient ground for the denial of the application; besides which it appears, by reference to our files, that the application was opposed by the present petitioner upon the ground that the case, however important to the parties, involved no question of public interest and general importance, nor any conflict between the decisions of state and federal courts, or between those of federal courts of different circuits. It is, of course sufficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed. And, although in this instance the interlocutory decision may have been treated as settling 'the law of the case' so as to furnish the rule for the guidance of the referee, the district court, and the Court of Appeals itself upon the second appeal, this court, in now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings."

VIII. REVIEW BY SUPREME COURT IN CASES NOT MADE FINAL (p. 422)

Only final judgments.—No appeal lies from a decree of a federal Circuit Court of Appeals which affirmed an interlocutory order of a District Court denying an application for a preliminary injunction upon the ground that there was an adequate remedy at law, where final decree dismissing the bill was neither entered in

the District Court nor directed by the Circuit Court of Appeals so as to preclude amendment of the bill and further proceedings. *Union Pac. R. Co. v. Weld County*, (1918) 247 U. S. 282, 38 S. Ct. 510, 62 U. S. (L. ed.) —.

Federal question.—Where it sufficiently appears from an amended bill that jurisdiction did not depend solely upon the citizenship of the respective parties but that the controversy involved with other questions the construction of an Act of Congress prescribing the authority of a territorial legislature, the decision of the Circuit Court of Appeals is not final. *Christianson v. King County*, (1915) 239 U. S. 356, 36 S. Ct. 114, 60 U. S. (L. ed.) 327.

But a mere formal statement in a bill that the cause of action is one arising under the Constitution and laws of the United States is not sufficient to establish that fact so as to authorize the Supreme Court to review a judgment of the Circuit Court of Appeals under this section. *Norton v. Whiteside*, (1915) 239 U. S. 144, 36 S. Ct. 97, 60 U. S. (L. ed.) 186.

The question as to the construction of the word "officer" as used in the Criminal Code of March 4, 1909, ch. 321, § 32, 1909 Supp., p. 414, and whether it includes a congressman does not involve the Constitution of the United States so as to permit an appeal to the Supreme Court under this section. *Lamar v. U. S.*, (1916) 240 U. S. 60, 36 S. Ct. 255, 60 U. S. (L. ed.) 526.

Value of matter in controversy.—"It long has been settled that the jurisdiction conferred by Congress upon any court of the United States in a case where the matter in controversy exceeds a certain sum of money does not include cases where the rights of the parties are incapable of being valued in money, and therefore excludes habeas corpus cases." *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700.

In an action by the United States to recover penalties for certain violations of the Hours of Service Act of March 4, 1907, ch. 2939, title RAILROADS, 1909 Supp., p. 581, where defendant challenged and sought to have reviewed only so much of the judgment against it affirmed by the Circuit Court of Appeals as awarded recovery of six penalties of \$150 each, for as many separate violations of the Act, the requisite jurisdictional amount of \$1,000 was not in dispute and a writ of error was dismissed. *San Pedro, etc., R. Co. v. U. S.*, (1918) 247 U. S. 307, 38 S. Ct. 498, 62 U. S. (L. ed.) —.

Vol. IV, p. 428, sec. 11.

Time of taking appeal, etc., from Porto Rico, see note to 1916 Supp., p. 135 (Act of Jan. 28, 1915), *infra*, p. 1323.

Vol. IV, p. 436, sec. 687.

Suits by states.—The Supreme Court would be ousted of jurisdiction of a suit by a state if it should appear that a citizen of the state was an indispensable party. *New Mexico v. Lane*, (1917) 243 U. S. 52, 37 C. Ct. 348, 61 U. S. (L. ed.) 588.

Where United States necessary party.—In *New Mexico v. Lane*, (1917) 243 U. S. 52, 37 S. Ct. 348, 61 U. S. (L. ed.) 588, the court dismissed for want of jurisdiction, because there were questions of law and of fact upon which the United States would have to be heard, an original bill filed by the state of New Mexico against the Secretary of the Interior and the Commissioner of the General Land Office to establish the state's asserted title to certain lands under the school land grant, and to restrain the Interior Department from disposing of such lands.

Vol. IV, p. 439, sec. 688.

Prohibition.—A writ of prohibition will not be issued by the federal Supreme Court to prevent further proceedings in an action brought against a contractor and a petitioner for the writ as its surety, under the Act of Feb. 24, 1905, ch. 778, in *PUBLIC CONTRACTS*, vol. 10, p. 343, on the ground that the rights of some of the claimants were asserted after the one-year period of limitation which the statute fixes. *Ex p. Southwestern Surety Ins. Co.*, (1918) 247 U. S. 19, 38 S. Ct. 430, 62 U. S. (L. ed.) —, where the court said: "This depends upon facts which are not before us and besides involves a question within the competency of the court to decide concerning which, therefore, there is no basis for granting the writ of prohibition or sanctioning a resort to any other extraordinary legal remedy."

Vol. IV, p. 443, sec. 690.

Questioning jurisdiction.—On appeal or writ of error the question of appellate jurisdiction of the Supreme Court will be noticed and determined by the court, though the question be not suggested or argued by counsel. *Swift v. Hoover*, (1916) 242 U. S. 107, 37 S. Ct. 56, 61 U. S. (L. ed.) 175, dismissing an appeal for want of jurisdiction noticed by the court sua sponte.

Vol. IV, p. 450, sec. 700.

Waiver without written stipulation.—Where waiver of a jury trial is effected either by express oral consent or by personal attendance upon the trial without objection, but without the filing of a written stipulation, rulings of the court upon the trial are not reviewable, for such a submission to the decision of the court is

not within the provisions of R. S. secs. 649 and 700. *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

An oral waiver of trial by jury does not satisfy the statute. *Illinois Surety Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 527, 143 C. C. A. 595.

Findings and review.—In *Sierra Land, etc., Co. v. Desert Power, etc., Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 982, 144 C. C. A. 264, the court made the general finding, "And the court, having fully considered the premises, finds the issue in favor of the defendant," and entered a judgment accordingly. It was held that the Appellate Court could not, on writ of error, inquire into the sufficiency of the testimony to support the finding where there was no application to the trial court for a declaration of law that upon the whole case the finding should be for the plaintiff, and an exception to the refusal to grant the application, and that the Appellate Court was limited to a review of such rulings as were excepted to during the progress of the trial.

In *Good Pine Lumber Co. v. Duke*, (C. C. A. 5th Cir. 1916) 229 Fed. 714, 144 C. C. A. 124, where the record showed no agreed statement of facts and no special finding of facts by the judge, but a general finding, embodied in the judgment assigning no other reason than that the law and the evidence was in favor of the plaintiff and against the defendant, only the rulings of the court during the progress of the case, duly presented by a bill of exceptions, could be reviewed.

Rulings and exceptions.—In *Phoenix Securities Co. v. Dittmar*, (C. C. A. 9th Cir. 1915) 224 Fed. 892, 140 C. C. A. 336, on writ of error to review a judgment for the plaintiff, there being no finding of facts, the court said: "Upon the assignment that there was no evidence to sustain the judgment, the question arises: To what extent may the decision of the court below be reviewed here upon the writ of error? . . . The case at bar was submitted to the court for decision upon the pleadings and evidence at the close of the trial, and the question whether there was any evidence to sustain the judgment for the plaintiff was not presented to the court. Under these circumstances, upon a review of the case in this court, we are confined to the consideration of the question whether the complaint stated a cause of action, and whether any objection was taken and exception reserved to the admission of testimony in the course of the trial."

Vol. IV, p. 458, sec. 701.

Applicable to Circuit Courts of Appeals.—Under this section the Circuit Court of Appeals is vested with power to modify as well as to affirm or reverse any

judgment of the District Court, and in a case tried without a jury, where the findings of fact made by the court are undisputed, as well as when they are agreed upon by the parties, the proper judgment may be rendered thereon in the appellate tribunal after a reversal of the judgment of the trial court. *U. S. v. Illinois Surety Co.*, (C. C. A. 7th Cir. 1915) 226 Fed. 653, 141 C. C. A. 409.

Vol. IV, p. 462, sec. 705.

See notes to 1912 Supp., p. 235, Judicial Code, § 250, *infra*, p. 1319.

Vol. IV, p. 466, sec. 8.

See notes under 1912 Supp., p. 235, Judicial Code, § 250, *infra*, this title, p. 1319.

Vol. IV, p. 466. [Act of March 3, 1897.]

"The writ of certiorari when issued to the Court of Appeals is not limited to cases in which final judgment has been entered, but only to cases in which the judgment when entered is final." *George A. Fuller Co. v. Otis Elevator Co.*, (1918) 245 U. S. 489, 38 S. Ct. 180, 62 U. S. (L. ed.) —.

See notes to 1912 Supp., p. 236, Judicial Code, § 251, *infra*, p. 1320.

A writ of certiorari was dismissed as improvidently granted in *Tyrrell v. District of Columbia*, (1917) 243 U. S. 1, 37 S. Ct. 361, 61 U. S. (L. ed.) 557, because the petitioner for certiorari had not reserved an exception to the charge of the court on the exact point which was made the basis of the writ of certiorari.

Certiorari to Circuit Court of Appeals, see notes to vol. IV, p. 409, § 6, *supra*, at p. 1285.

Vol. IV, p. 467, sec. 709.

See also notes to Act of Sept. 6, 1916, ch. 448, § 2, in title JUDICIARY, *ante*, this volume, p. 412.

II. FINAL JUDGMENTS OR DECREES IN ANY SUIT IN THE HIGHEST COURT OF A STATE (p. 469).

See *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) —, as cited in notes to Act of Sept. 6, 1916, ch. 448, § 2, *ante*, this volume, title JUDICIARY, at p. 412.

Judgment only interlocutory.—A judgment of the Washington Supreme Court affirming on certiorari a judgment of the state Superior Court to the effect that the petitioner was entitled to condemn and appropriate certain land for a private way of necessity, and remanding the cause for further proceedings, was interlocutory and not reviewable by the federal Supreme Court, where, in view of the decisions of

the state Supreme Court, such a judgment was to be interpreted as being subject to a condition that the proper compensation be first ascertained and paid. *Washington v. Superior Court*, (1917) 243 U. S. 251, 37 S. Ct. 295, 61 U. S. (L. ed.) 702.

Prohibition is a distinct suit and the judgment finally disposing of it is a final judgment. *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, (1916) 240 U. S. 30, 36 S. Ct. 234, 60 U. S. (L. ed.) 507; *Detroit, etc., R. Co. v. Michigan R. Commission*, (1916) 240 U. S. 564, 36 S. Ct. 424, 60 U. S. (L. ed.) 802.

Highest court of the state.—A writ of error was properly prosecuted to the Court of Appeals of Ohio where the Supreme Court of the state had denied an application to direct the Court of Appeals to certify the record for review, and had dismissed a writ of error for want of jurisdiction. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1916) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

Where the Court of Appeals of Ohio specifically affirmed a judgment of the Superior Court of Cincinnati and ordered "that a special mandate be sent to the Superior Court of Cincinnati to carry this judgment into execution," and the Ohio Supreme Court overruled an application to direct the Court of Appeals to certify its record to the Supreme Court for review, a writ of error from the federal Supreme Court addressed to the Superior Court of Cincinnati was dismissed because it should have been directed to the Court of Appeals. *Cincinnati Second Nat Bank v. Okeana First Nat. Bank*, (1916) 242 U. S. 600, 37 S. Ct. 236, 61 U. S. (L. ed.) 518.

III. FICTITIOUS QUESTIONS (p. 469)

Frivolous claim.—The claim that interstate commerce was unlawfully burdened by requiring that the delivery track owned by a railway company which, though technically a separate legal entity, was the mere agency or instrumentality of two other railway companies through joint ownership and control, should be treated, with respect to intrastate traffic, precisely as many other similarly used and situated tracks had always been used by the owning companies, was too unsound to merit consideration by the federal Supreme Court on writ of error to a state court: *Chicago, etc., R. Co. v. Minneapolis Civic, etc., Assoc.*, (1918) 247 U. S. 490, 38 S. Ct. 553, 62 U. S. (L. ed.) —.

In *Valley Steamship Co. v. Wattawa*, (1917) 244 U. S. 202, 37 S. Ct. 523, 61 U. S. (L. ed.) 1084, the court said: "The first point relied upon is entirely without merit, and inadequate to support our jurisdiction. In the absence of congressional legislation the settled general rule is that without violating the commerce clause, the states may legislate concerning relative

rights and duties of employers and employees while within their borders, although engaged in interstate commerce," citing cases.

VI. VALIDITY OF STATUTE OF OR AUTHORITY EXERCISED UNDER STATE (p. 473)

Drawn in question.—Where the attorney for the plaintiff in an action on the federal Employer's Liability Act, which the defendant settled before trial by paying a certain amount, intervened and claimed his fee, pursuant to his contract with the plaintiff, and recovered judgment for the same, against the defendant in the action, the federal Supreme Court had jurisdiction of a writ of error as against the contention that the validity of the state statute giving attorneys a lien upon a cause of action, so far as it applied to a lien upon a cause of action arising on the federal Employers' Liability Act was not sufficiently shown to be a ground of the judgment, where the question was called to the attention of the trial court and was discussed at length by the appellate state court. *Dickinson v. Stiles*, (1918) 246 U. S. 631, 38 S. Ct. 415, 62 U. S. (L. ed.) —.

Due process of law.—On writ of error to review a decree which affirmed a decree in favor of a state railroad commission in a suit by a railroad common carrier to enjoin it from enforcing its order requiring locomotives to be equipped with headlights of not less than 1,500 candle power, the railroad company could not insist that the order was so indefinite and uncertain in its terms as not to furnish an intelligible measure of the company's duty, and was therefore a denial of due process of law, where the State Supreme Court held that the railroad commission had power to grant relief through a rehearing, and that without first resorting to that method of procedure the company was not entitled to have the order set aside by the courts, and the record on the writ of error showed that the company was accorded a hearing upon the very question of modification of the order, but abandoned it. *Vandalia R. Co. v. Public Service Commission Co.*, (1916) 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276.

"The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law. *Sayward v. Denny*, 158 U. S. 180, 186, 15 S. Ct. 777, 39 U. S. (L. ed.) 941, 943; *Central Land Co. v. Laidley*, 159 U. S. 103, 112, 16 S. Ct. 80, 40 U. S. (L. ed.) 91, 94; *Castillo v. McCormico*, 168 U. S. 674, 683, 684, 18 S. Ct. 229, 42 U. S. (L. ed.) 622, 625, 626." *Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, (1917) 243

U. S. 157, 37 S. Ct. 318, 61 U. S. (L. ed.) 644, disregarding the claim that the state court, in disposing of some of the questions, including that of estoppel in pais, misconstrued or misapplied the statutory and common law of the state, and thereby infringed the due process and equal protection clauses of the 14th amendment.

Impairing contracts—*By statute.*—"In cases of this character, the jurisdiction of this court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and operation as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is placed upon the subsequent legislation. *McCullough v. Virginia*, 172 U. S. 102, 116, 117, 19 S. Ct. 134, 43 U. S. (L. ed.) 382, 387, 388; *Houston, etc., R. Co. v. Texas*, 177 U. S. 66, 77, 20 S. Ct. 545, 44 U. S. (L. ed.) 673, 680; *Terre Haute, etc., R. Co. v. Indiana*, 194 U. S. 579, 589, 24 S. Ct. 767, 48 U. S. (L. ed.) 1124, 1129; *Louisiana v. New Orleans*, 215 U. S. 170, 175, 30 S. Ct. 40, 54 U. S. (L. ed.) 144, 147; *Fisher v. New Orleans*, 218 U. S. 438, 440, 31 S. Ct. 57, 54 U. S. (L. ed.) 1099; *Carondelet Canal & Nav. Co. v. Louisiana*, 233 U. S. 362, 376, 34 S. Ct. 627, 58 U. S. (L. ed.) 1001, 1006; *Louisiana R. & Nav. Co. v. Behrman*, 235 U. S. 164, 170, 35 S. Ct. 62, 59 U. S. (L. ed.) 175, 180. . . . Where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? (3) Has that obligation been impaired by subsequent legislation? *Houston, etc., R. Co. v. Texas*, 177 U. S. 66, 77, 20 S. Ct. 545, 44 U. S. (L. ed.) 673, 680; *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 142, 147, 21 S. Ct. 575, 45 U. S. (L. ed.) 788, 791; *Terre Haute, etc., R. Co. v. Indiana*, 194 U. S. 579, 589, 24 S. Ct. 767, 48 U. S. (L. ed.) 1124, 1129." *Detroit United R. v. Michigan*, (1916) 242 U. S. 238, 37 S. Ct. 87, 61 U. S. (L. ed.) 268.

VII. TITLE, RIGHT, PRIVILEGE, OR IMMUNITY CLAIMED UNDER CONSTITUTION, TREATY, OR STATUTE OF OR AUTHORITY EXERCISED UNDER UNITED STATES (p. 476)

In general.—It cannot be held that any right of plaintiff in error under a law of the United States was infringed by a decision and judgment when the law creating the supposed right was not enacted until after the judgment. *Vandalia R. Co. v. Public Service Commission*, (1916) 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276.

The fact that the plaintiff's pleading does not refer in terms to a federal statute determining the defendant's liability is not controlling as to whether a federal question exists, and if the plaintiff's cause of action requires the application of the federal statute and his right thereunder is denied in a state court the federal Supreme Court has jurisdiction to review the federal question involved. *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788.

Several grounds.—In *Wellsville Oil Co. v. Miller*, (1917) 243 U. S. 6, 37 S. Ct. 362, 61 U. S. (L. ed.) 559, affirming a judgment which dismissed an appeal from a judgment dismissing the petition in a suit to protect rights under an oil and gas lease in Oklahoma, and to set aside a subsequent conflicting lease, the court said: "Before coming to consider the merits of the errors relied upon, we observe that because of the federal nature of the court which authorized the lease whose validity was involved, the subject matter with which the case dealt (Indian land), and the asserted want of power in the Secretary of the Interior to disapprove the lease, and the further assertion that the court had no authority in any event to subject the lease to the approval of the Secretary, we think the issues involved so concern matters of inherently federal nature as to afford jurisdiction. *Swafford v. Templeton*, 185 U. S. 487, 46 L. ed. 1005, 22 Sup. Ct. Rep. 783; *Fritzen v. Boatmen's Bank*, 212 U. S. 364, 53 L. ed. 551, 29 Sup. Ct. Rep. 366; *Ohio ex rel. Davis v. Hildebrand*, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708. We therefore overrule the motion to dismiss."

Boundaries between states.—"Whether two states of the Union, either by long acquiescence in a practical location of their common boundary, or by agreement otherwise evidenced, have definitely fixed or changed the limits of their jurisdiction as laid down by the authority of the general Government in treaty or statute, is in its nature a federal question." *Cissna v. Tennessee*, (1918) 246 U. S. 289, 38 S. Ct. 309, 62 U. S. (L. ed.) —.

Full faith and credit clause.—An essential step in invoking the full faith and credit clause as to a judgment in another state is that the faith and credit that it has by law or usage in the courts of the state of its rendition must be brought to the attention of the court where the judgment is offered. *Gasquet v. Lapeyre*, (1917) 242 U. S. 367, 37 S. Ct. 165, 61 U. S. (L. ed.) 367.

Impairment of the obligation of a contract by judicial decision does not raise a federal question. *Kryger v. Wilson*, (1916) 242 U. S. 171, 37 S. Ct. 34, 61 U. S. (L. ed.) 229.

Judgment of federal court.—The Supreme Court had jurisdiction on writ of

error to review a decree in which a decree of a federal court was an element of decision against the plaintiff in error and was claimed by him to be an element in his favor. *Donohue v. Vosper*, (1917) 243 U. S. 59, 37 S. Ct. 350, 61 U. S. (L. ed.) 592.

Under federal Employers' Liability Act.—In *Atlantic Coast Line R. Co. v. Mims*, (1917) 242 U. S. 532, 37 S. Ct. 188, 61 U. S. (L. ed.) 476, more fully described *infra*, p. 1294, a writ of error was dismissed because the party's claim under the federal Employers' Liability Act was not asserted at the proper time and in the proper manner.

Under national banking laws.—In *Union Nat. Bank v. McBoyle*, (1917) 243 U. S. 26, 37 S. Ct. 370, 61 U. S. (L. ed.) 570, a writ of error to review a judgment declaring plaintiffs to be the owners of certain shares of stock which they had purchased from the cashier of a national bank, was dismissed for want of jurisdiction.

Property taken for private purpose.—In *O'Neill v. Learner*, (1915) 239 U. S. 244, 36 S. Ct. 54, 60 U. S. (L. ed.) 249, it was held that a federal question was presented, it appearing that a claim of the plaintiffs in error that property of theirs was taken for a private purpose in violation of the due process of law provision in the Federal Constitution, was denied. See to the same effect *Myles Salt Co. v. Iberia, etc., Drainage Dist.*, (1916) 239 U. S. 478, 36 S. Ct. 204, 60 U. S. (L. ed.) 392.

Under corporate charter conferred by Congress.—In *Knights of Pythias v. Mims*, (1916) 241 U. S. 574, 36 S. Ct. 702, 60 U. S. (L. ed.) 1179, a motion to dismiss a writ of error to a state court was denied because the suit was against a corporation chartered by Congress and it turned on the construction given the charter.

Under Interstate Commerce Act.—Where the Carmack amendment is in issue in the state court because of a claim for damages for loss of goods shipped in interstate commerce, the Supreme Court of the United States has jurisdiction to review the judgment of the state court if some right accruing under the statute is denied. *Cleveland, etc., R. Co. v. Dettlebach*, (1916) 239 U. S. 588, 36 S. Ct. 177, 60 U. S. (L. ed.) 453.

In an action against an initial carrier of an interstate shipment, for its negligence and that of connecting carriers, on a through bill of lading containing, among other things, a stipulation that the carrier should not be liable for damages unless claims for damages were reported to the delivery line within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, the defendant's answer, making one of the issues upon which the case

was tried and decided, set up this clause in the bill of lading and the failure of the plaintiff to comply with it. It was held that a right was involved which was the creation of a federal statute, viz., the Carmack amendment of June 29, 1906, and the action was necessarily founded on that amendment. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917.

Under Safety Appliance Act.—Where an order of a state railroad commission was not invalid as regarded the Safety Appliance Act of Feb. 17, 1911, 1912 Supp., p. 339, under the controlling principles declared in *Atlantic Coast Line R. Co. v. Georgia*, (1913) 234 U. S. 280, 290, 34 S. Ct. 829, 58 U. S. (L. ed.) 1312, 1317, the validity of such order having been affirmed by the state Supreme Court, its validity could not be attacked on writ of error in the federal Supreme Court on the ground that it infringed the subsequently enacted amendatory Safety Appliance Act of March 4, 1915, 1916 Supp., p. 215. *Vandalia R. Co. v. Public Service Commission*, (1916) 242 U. S. 255, 37 S. Ct. 212, 61 U. S. (L. ed.) 276.

Under removal statutes.—Denial of a defendant's contention, at the close of the plaintiff's evidence, that the case which was confessedly not before removable had become removable by failure to prove the allegation which made the case previously nonremovable, did not constitute a denial of federal right where, according to the established doctrine of the federal Supreme Court, the defendant had not acquired a right of removal at that time. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

Guaranty of republican form of government.—"As has been decided repeatedly, the question whether this guaranty has been violated is not a judicial but a political question, committed to Congress, and not to the courts. *Luther v. Borden*, 7 How. 1, 39, 42, 12 L. ed. 581, 597, 599; *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U. S. 118, 56 L. ed. 377, 32 Sup. Ct. Rep. 224; *Kiernan v. Portland*, 223 U. S. 151, 56 L. ed. 386, 32 Sup. Ct. Rep. 231; *Marshall v. Dye*, 231 U. S. 250, 256, 58 L. ed. 206, 207, 34 Sup. Ct. Rep. 92; *Ohio ex rel. Davis v. Hildebrandt*, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708."

VIII. DRAWN IN QUESTION OR SPECIALLY SET UP AND CLAIMED (p. 480)

Necessity.—Unless some title, right, privilege, or immunity is duly and specially claimed, the federal Supreme Court has no jurisdiction. *Missouri, etc., R. Co. v. Taber*, (1917) 244 U. S. 200, 37 S. Ct. 522, 61 U. S. (L. ed.) 1082.

Time to raise question or make claim.—A claim of federal question first made

in an application for leave to file a second petition for rehearing comes too late. *Bilby v. Stewart*, (1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) —.

Nothing is better settled than that it is too late to raise a federal question for the first time in a petition for a rehearing, after the final judgment of the state court of last resort. If, however, the state court actually entertains the petition and decides the federal question, and this appears by the record, the statutory requirement that the right shall be specially set up and denied is complied with. *Atchison, etc., R. Co. v. Harold*, (1916) 241 U. S. 371, 36 S. Ct. 665, 60 U. S. (L. ed.) 1050.

"The claim under the Carmack Amendment was first set up and asserted in a petition for rehearing after the judgment in the trial court was affirmed by the Supreme Court of the state. The petition was not entertained, but was denied without passing upon the federal question thus tardily raised. That question therefore is not open to consideration here." *St. Louis, etc., R. Co. v. Shepherd*, (1916) 240 U. S. 240, 36 S. Ct. 274, 60 U. S. (L. ed.) 622.

In *Saunders v. Shaw*, (1917) 244 U. S. 317, 37 S. Ct. 638, 61 U. S. (L. ed.) 1163, holding that the court had jurisdiction on a writ of error, where the state Supreme Court had declined to consider an application by plaintiff in error for a rehearing, it was said: "The record discloses the facts but does not disclose the claim of right under the 14th amendment until the assignment of errors filed the day before the chief justice of the state granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the supreme court, done unexpectedly, at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the 14th Amendment need not be by legislation. *Home Teleph. & Teleg. Co. v. Los Angeles*, 227 U. S. 278, 57 L. ed. 510, 33 Sup. Ct. Rep. 312. It appears that shortly after the supreme court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the state by his assignment of errors. We do not see what more he could have done."

In *Nevada-California-Oregon R. Co. v. Burrus*, (1917) 244 U. S. 103, 37 S. Ct. 576, 61 U. S. (L. ed.) 1019, an action for

breach of a contract to furnish plaintiff (defendant in error) a special train to carry him to a designated point, the plaintiff got a judgment, and the only question before the federal Supreme Court was whether any rights of the defendant under the Interstate Commerce Act had been infringed. The ground on which such an infraction was alleged was that the trial court, after the trial had been going on for more than a day, refused to allow the answer to be amended so as to set up that no tariff rate for special trains had been filed by the defendant and that therefore the contract was illegal. The defendant had mentioned the point at the beginning of the trial, but this was the first time that it was presented in proper form under the state practice, although some months had elapsed since the beginning of the suit, and demurrers and other defenses had been interposed without suggesting this one. The Supreme Court of the state declined to overrule the discretionary judgment of the court below; and the federal Supreme Court said: "We perceive no reason why this court should interfere with the practice of the state."

In *Atlantic Coast Line R. Co. v. Mims*, (1917) 242 U. S. 532, 37 S. Ct. 188, 61 U. S. (L. ed.) 476, the plaintiff administratrix sued a railroad common carrier for wrongful death of her intestate, nothing in her complaint tending to state a cause of action under the federal statute. The defendant filed an answer which was a specific denial under the state Code of Civil Procedure, and when the case was called for the second trial the defendant asked leave to amend its answer by pleading "gross and wilful contributory negligence" on the part of the deceased, which was granted, and the trial proceeded until plaintiff rested her case. The defendant then for the first time offered to introduce testimony which it was claimed, if admitted, would have tended to prove that the train which the deceased was in the act of approaching to inspect when he was killed was engaged in interstate commerce and that the deceased was in this respect and otherwise engaged in interstate commerce." The trial court rejected this proffer of testimony on the ground that it came too late and was not relevant to any issue tendered by the pleadings in the case. No application was made for leave to amend the answer by adding the claim under the federal law. The federal Supreme Court dismissed a writ of error because the defendant's claim was not asserted at the proper time and in the proper manner.

The proper way to raise the question or make the claim.—Where an action against a railroad company for death of an employee was based upon the state statute, the answer did not set up or

rely upon the federal Employers' Liability Act, the trial court's attention was not called thereto, and, although urged to hold liability dependent upon it, the state Supreme Court declined to pass upon that point because not presented to the trial court, and this ruling was in entire accord with the state statute and established practice, the federal Supreme Court dismissed a writ of error for want of jurisdiction. *Missouri, etc., R. Co. v. Taber*, (1917) 244 U. S. 200, 37 S. Ct. 522, 61 U. S. (L. ed.) 1082.

Where an action was brought on a through bill of lading against an initial carrier of an interstate shipment, for its negligence and that of connecting carriers, and the defendant's answer set up a stipulation in the bill of lading and the plaintiff's failure to comply with it, this was a sufficient claim of right under the Carmack Amendment of the Interstate Commerce Law, as the state court must take judicial notice of the federal statute and the settled law that the bill of lading contained the entire contract upon which the responsibilities of the parties rested. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917, where the court said: "The federal right is not required to be pleaded in any special or particular form. It is enough that it be relied upon and in a proper manner called to the attention of the court."

In *Valley Steamship Co. v. Wattawa*, (1917) 244 U. S. 202, 37 S. Ct. 523, 61 U. S. (L. ed.) 1084, dismissing for want of jurisdiction a writ of error to the Ohio Court of Appeals, the court said: "The second reason for reversal now set up was not presented to the trial court in any form. It was not pointed out clearly, if at all, by the petition in error before the Court of Appeals, and was not definitely mentioned in the opinion of that court, whose powers only extend to a review of the trial court's judgment for errors appearing on the record. Section 12, 247, Ohio General Code, as amended by 103 Ohio Laws, pp. 405, 431. The question, therefore, is not properly before us. *Mutual L. Ins. Co. v. McGrew*, 188 U. S. 291, 308, 309, 47 L. ed. 480, 484, 485, 63 L. R. A. 33, 23 Sup. Ct. Rep. 375."

Effect of opinion of state court.—In *Cissna v. Tennessee*, (1918) 246 U. S. 289, 38 S. Ct. 309, 62 U. S. (L. ed.) —, holding that the court had jurisdiction of a writ of error, although the record did not show that plaintiff in error specially set up in the state courts any contention that the decision of the merits turned upon questions of federal law, except as might appear by inference from the nature of the grounds upon which the decision was rested, the court said: "But if the supreme court of the state treated federal questions as necessarily

involved and decided them adversely to plaintiff in error, and could not otherwise have reached the result that it did reach, it becomes immaterial to consider how they were raised. *Miedreich v. Lauenstein*, 232 U. S. 236, 243; *North Carolina R. Co. v. Zachary*, 232 U. S. 248, 257; *Mallinckrodt Works v. St. Louis*, 238 U. S. 41, 49." The court then pointed out that the opinion of the state court made it clear that the decision adverse to the plaintiff in error turned essentially upon questions of federal law.

A writ of error will be dismissed where, from absence of an opinion by the court below, it is impossible to say whether its judgment was rested upon state questions adequate to sustain it independent of the federal questions, or upon such federal questions, both being in the case. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1916) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

IX. DECISION OF STATE COURT (p. 485)

Decision, when adverse.—It has never been required that a federal right must be denied in terms, but it has been uniformly held that it is sufficient if the state court necessarily denied it in the judgment rendered. So where the defendant in an action against an initial carrier of an interstate shipment, for its negligence and that of connecting carriers, set up in its answer the breach of a stipulation in the through bill of lading, and insisted that it had not been complied with, and the state court, in stating in its decision against the defendant that the bill of lading would be controlling in the absence of special facts which it found as to the effect of verbal notice given to certain agents in New York, necessarily denied the defendant's contention of federal right, viz., that the provision of the bill of lading was conclusive of the rights of the parties, by virtue of the Carmack Amendment of the Interstate Commerce Law. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 243 S. Ct. 462, 61 U. S. (L. ed.) 917.

"Where the state court does not decide against the plaintiff in error upon an independent state ground, but, deeming the federal question to be before it, actually entertains it and decides it adversely to the federal right asserted, this court has jurisdiction to review the judgment, assuming it to be a final judgment as it is here." *Rogers v. Hennepin County*, (1916) 240 U. S. 184, 36 S. Ct. 265, 60 U. S. (L. ed.) 594.

Decision adverse by implication.—A federal question which will sustain a writ of error to a state court is involved in the denial of a requested instruction that a common-law marriage was not recognized by the Chickasaw Indians, and that a marriage of Chickasaws without a com-

pliance with their laws was void, where, considering all the requests for rulings and the ruling themselves, it may be assumed that the request meant that a marriage of Chickasaws, although in accord with their customs, was invalid under a Chickasaw law unless solemnized by a judge or ordained preacher, and, by implication, that the Act of Congress of May 2, 1890, 26 Stat. at L. 98, ch. 182, § 38, did not validate the marriage in accordance with still prevailing custom, if no judge or preacher added his sanction. *Carney v. Chapman*, (1918) 247 U. S. 102, 38 S. Ct. 449, 62 U. S. (L. ed.) —.

Other grounds of decision.—In *Municipal Securities Corp. v. Kansas City*, (1918) 246 U. S. 63, 38 S. Ct. 224, 62 U. S. (L. ed.) —, dismissing, for want of jurisdiction, a writ of error to a decision of the Missouri Supreme Court, the opinion of the latter court was quoted, and it was then said: "It therefore follows that the Missouri Supreme Court rested its decision upon a ground of general law adequate to support it, independently of the decision upon alleged violation of federal right under the Fourteenth Amendment. In that situation it is well settled that a case from a state court is not reviewable here."

Where the state court "rested its judgment upon a non-federal ground adequate to support it, the existence of a federal question is of no significance." *Bilby v. Stewart*, (1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) —.

The existence of ample and efficient administrative remedies under state laws, and the failure on the part of the plaintiff in error to resort to them in the state court, prevents him from taking advantage of a federal question involved in the case, and securing a review by the federal Supreme Court. *Mellon Co. v. McCafferty*, (1915) 239 U. S. 134, 36 S. Ct. 94, 60 U. S. (L. ed.) 181.

In proceedings by an Ohio power company to condemn land by eminent domain four preliminary questions were required by the state law to be passed upon by the Common Pleas Court, viz., the existence of the petitioning corporation, its right to make the appropriation, its inability to agree as to the compensation to be paid for the property, and the necessity for the appropriation. The case did not come to a jury trial on the question of compensation because, after hearing evidence on the preliminary issues, on motion of the defendants it entered an order dismissing the petition, no reason for such decision having been expressed. The case was taken to the Ohio Court of Appeals, it being assigned as error that the trial court had erred in its rulings on the four preliminary questions, and it was further alleged that the refusal of the court to

order the condemnation of the land upon the theory that it was not subject to be condemned because, after the suit had been brought, it had been acquired by the traction company (admitted on its own motion as a party), and by it dedicated to a public use, constituted an impairment of the contract rights of the plaintiff and a taking of its property without due process of law, in violation of the Federal Constitution. Following a judgment of affirmance without a written opinion, the power company applied to the state Supreme Court to direct the Court of Appeals to certify the record for review, which was denied, and a writ of error which was prosecuted to the Court of Appeals from the Supreme Court was dismissed for want of jurisdiction for the stated ground that the case did not "involve any question arising under the Constitution of the United States or the state of Ohio." The federal Supreme Court dismissed a writ of error to the state Court of Appeals, on the ground that there were independent state grounds broad enough to sustain the judgment. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1916) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

Where the disposition of the case by the state court depended upon the construction of statutes of the United States, and the opinion of the state court showed that those statutes were considered and federal rights asserted under them denied, and the controlling effect of the federal statutes necessarily followed in view of the nature of the rights dealt with, the Supreme Court had jurisdiction on a writ of error. *California v. Deseret Water Oil, etc., Co.*, (1917) 243 U. S. 415, 37 S. Ct. 394, 61 U. S. (L. ed.) 821, citing *Miedreich v. Lanenstein*, (1913) 232 U. S. 236, 242, 34 S. Ct. 309, 58 U. S. (L. ed.) 584, 589; *North Carolina R. Co. v. Zachary*, (1913) 232 U. S. 248, 257, 34 S. Ct. 305, 58 U. S. (L. ed.) 591; *Ann. Cas. 1914C 159*; *Rogers v. Hennepin County*, (1916) 240 U. S. 184, 188, 36 S. Ct. 265, 60 U. S. (L. ed.) 594, 597.

Decisions on questions of fact.—"The question arises, whether the basis of fact upon which the state court rested its decision denying the asserted federal rights has any support in the record; for if not, it is our duty to review and correct the error." *Postal Tel. Cable Co. v. Newport*, (1918) 247 U. S. 464, 38 S. Ct. 566, 62 U. S. (L. ed.) —.

Various grounds of decision — State procedure.—Whether the local rule of practice, that if instructions are offered upon any issue respecting which the jury should be instructed and they are incorrect in form or substance, it is the duty of the trial court to prepare or direct the preparation of a proper instruction upon the point in place of the defective one, was

applicable in the case at bar, "is a question of local law, with which we have no concern," said the court in *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525, 38 S. Ct. 379, 62 U. S. (L. ed.) —, *distinguishing* *Chesapeake, etc., R. Co. v. De Atley*, (1916) 241 U. S. 310, 36 S. Ct. 564, 60 U. S. (L. ed.) 1016, on the ground that in the latter case the state court "assumed for the purposes of its decision that the local rule applied, and was thereby led to decide a question of federal law," and "consequently we had and exercised jurisdiction to review its decision upon that question."

"An objection that a copy of the declaration sued upon should have been filed with the declaration is a matter of state procedure and not open here." *Chicago L. Ins. Co. v. Cherry*, (1917) 244 U. S. 25, 37 S. Ct. 492, 61 U. S. (L. ed.) 966.

Municipal nonliability.—In *Municipal Securities Corp. v. Kansas City*, (1918) 246 U. S. 63, 38 S. Ct. 224, 62 U. S. (L. ed.) —, a suit was brought against a city by the assignee of certain tax bills to recover on the ground that the defendant by its official acts, ordinances, and conduct appropriated to the public use the property and property rights of the plaintiff, consisting of valid and subsisting liens upon certain real estate without making compensation therefor, and thereby violated the due process clause of the Fourteenth Amendment. But the state court held that, in view of the agreement of plaintiff's assignor with the defendant, and of the constitution and statutes of the state, and provisions in the defendant's charter, recovery could not be had upon any theory of contract, nor could he recover upon the theory of liquidated compensation for a tort, because no such right of action had been assigned to him. For the reason that the decision in favor of the defendant was based upon this non-federal ground, a writ of error was dismissed by the federal Supreme Court.

Estoppel in pais.—Where a federal question and a question of estoppel in pais, which was nonfederal, were decided against the plaintiff in error, the Supreme Court dismissed a writ of error for the reason that, in the particular case, the estoppel was broad enough to sustain the judgment. *Enterprise Irrigation District v. Farmers' Mut. Canal Co.*, (1917) 243 U. S. 157, 37 S. Ct. 318, 61 U. S. (L. ed.) 644.

"*Res judicata*, like other kinds of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon that ground, this of itself would be sufficient to sustain the judgment against reversal in this court except for two queries that must first be answered: (a) Is the question of state law in this case, independent of the federal questions? and (b) Is the decision reached upon that point suffi-

ciently well founded to furnish adequate support for the judgment?" *Postal Tel. Cable Co. v. Newport*, (1918) 247 U. S. 464, 38 S. Ct. 566, 62 U. S. (L. ed.) —, holding that the decision of a state court that a judgment against a corporation, rendered in a suit begun two years after it had conveyed all its property in the state to another corporation through which a third corporation afterward acquired title, concluded the latter corporation as being in privity of estate with the first-named corporation, was too clearly ill-founded to sustain its judgment against reversal in the federal Supreme Court.

Testamentary incapacity.—Where probate of a will was denied on the sole ground of mental incapacity, no reviewable federal question was presented, although the proponents set up a claim that the testator was a full-blood Creek Indian and that therefore "the execution of said will and the legal effect thereof and the necessity or nonnecessity of the probate of said will is thereby involved in this cause and presents federal questions." *Bilby v. Stewart*, (1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) —.

Damages not excessive.—Refusal to reverse a judgment for the plaintiff in an action on the federal Employers' Liability Act "on the ground that the damages are excessive" did not present a reviewable federal question. *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525, 38 S. Ct. 379, 62 U. S. (L. ed.) —.

Matter of local law—Champerous deed.—Where a contention that a deed of land by the heir of an Indian allottee in Oklahoma was champertous within the meaning of the state statute, was considered and decided by the Supreme Court of that state in the light of its own and other decisions, the holding of that court did not involve denial of a federal right, such as would make the ruling reviewable on a writ of error. *Gannon v. Johnston*, (1917) 243 U. S. 108, 37 S. Ct. 330, 61 U. S. (L. ed.) 622.

Adverse possession.—The question whether a plaintiff in a suit to quiet title to land which had been conveyed by the government to a state in aid of railroad construction had acquired title to the land by adverse possession was essentially a local question, involving an appreciation of the evidence as to the conduct of the parties, and not reviewable by the Supreme Court on writ of error. *Donohue v. Vosper*, (1917) 243 U. S. 59, 37 S. Ct. 350, 61 U. S. (L. ed.) 592.

XI. JUDGMENT ON ERROR (p. 490)

Reinstatement of first of two judgments.—See *Louisville, etc., R. Co. v. Stewart*, (1916) 241 U. S. 261, 36 S. Ct. 586, 60 U. S. (L. ed.) 989.

Vol. IV, p. 494, sec. 711, par. Fifth.

In general.—Where there was no averment in plaintiff's bill that either they or the defendants were the owners of a patent or that any patent had been issued to anybody, but only that application for a patent had been filed by parties who had assigned their rights to the plaintiffs and a defendant, and the suit was brought to prevent the unlawful use of information, which might relate to an invention about the patentability of which there was contention, which had been obtained under such confidential circumstances that it ought not to be used to plaintiffs' harm, the suit did not arise under the patent laws and a state court had jurisdiction. *Aronson v. Orlov*, (1917) 228 Mass. 1, 116 N. E. 951.

A suit for damages to business caused by a threat to sue under the patent law is not itself a suit under the patent law. And the same is true when the damage is caused by a statement of fact—that the defendant has a patent which is infringed. *American Well Works Co. v. Layne, etc., Co.*, (1916) 241 U. S. 257, 36 S. Ct. 585, 60 U. S. (L. ed.) 987.

Suit for royalties.—It has been held that where definite royalties, instead of profits, are made the ultimate object of recovery, the suit is one arising under the patent laws, and one of which the District Court has jurisdiction although the sum involved is less than \$3,000. *Swindell v. Youngstown Sheet, etc., Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 438, 144 C. C. A. 580.

Vol. IV, p. 498, sec. 716.

Extent of jurisdiction.—This section does not give authority to a federal District Court to issue processes to run beyond the limits of the territory in which it is established, but is a designation of the form or character of writs which such court may issue within the territory where it is established. *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, holding that a federal District Court in Wisconsin had no power to issue a writ directed to the marshal for the district of Massachusetts for the arrest of a person in that state and his removal to the district of Wisconsin.

A District Court may issue a writ of venire facias against a defendant in a criminal prosecution. *U. S. v. Philadelphia, etc., Ry. Co.*, (E. D. Pa. 1916) 237 Fed. 292.

Scire facias.—A District Court has jurisdiction to enforce a forfeited bail bond by writ of scire facias. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Mandamus—In general.—This section is construed as a process provision and

not as one conferring jurisdiction of the subject matter in mandamus proceedings. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 237 Fed. 292.

Under this Act the court may, however, in issuing a writ adopt the form of process prescribed by the state court where no specific form has been prescribed by Congress. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 237 Fed. 292.

The usual rule is that a petition for a writ of mandamus cannot be allowed to take the place of an appeal or writ of error to review the judicial action of an inferior court to correct an erroneous judgment or decree. *In re Garrosi*, (C. C. A. 1st Cir. 1916) 229 Fed. 363, 143 C. C. A. 483.

Removability to federal court of proceeding for mandamus, see notes to vol. 4, p. 265, § 1, *supra*, p. 1251.

To compel judicial action.—Error of a federal District Court sitting in New York in ordering transferred to the equity side of the court, a count in an action at law which claimed damages for breach of a contract to bequeath a specified sum, was corrected by the federal Supreme Court by granting mandamus to require the District Court to proceed and to give plaintiff the right to a trial at common law. *Matter of Simons*, (1918) 247 U. S. 231, 38 S. Ct. 497, 62 U. S. (L. ed.) —.

To clerk of court.—The refusal of a federal Circuit Court of Appeals to direct the clerk of that court to file the record in an appeal by seamen from a decree dismissing their libels for wages, without making a deposit to secure the costs, may be reviewed by the federal Supreme Court by mandamus. *Ex p. Abdu*, (1918) 247 U. S. 27, 38 S. Ct. —, 62 U. S. (L. ed.) —, holding that on submission of the rule to show cause the Supreme Court will consider the authority of the court below to make the order, although the writ prayed for is not directed to the court, but to its clerk, and hence, in form seeks to direct the clerk to disobey the order of the court, leaving the order unreviewed and unreversed.

Mandamus a substitute for execution.—Where, after judgment against a county, the court, without objection, on petition, order to show cause, and answer, issued an execution, and the proceeding had every essential attribute of a proceeding in mandamus, and there was no issue of fact, the appellate court, upon reversing the order for an execution as being prohibited by the state law, remanded the cause with directions to issue a mandamus against the county officers to pay the judgment, as the court would have had power to do and should have done instead of issuing an execution. *Clearwater County v. Pfeffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

Vol. IV, p. 509, sec. 720.

Construction in general.—The purpose of the section "being to prevent unseemly conflict between state and federal courts, the statute should be given such an interpretation as will effectuate its obvious purpose." *Hyattsville Bldg. Assoc. v. Bonic*, (1916) 44 App. Cas. (D. C.) 408.

"Generally speaking, the term 'proceeding' means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked. It is a very comprehensive term." *Hyattsville Bldg. Assoc. v. Bonic*, (1916) 44 App. Cas. (D. C.) 408.

Courts included.—"The Supreme Court of the District of Columbia is a court of the United States, and hence within the purview of this section." *Hyattsville Bldg. Assoc. v. Bonic*, (1916) 44 App. Cas. (D. C.) 408.

Jurisdiction first attaching.—"In a case in which a federal court first obtains jurisdiction of the subject-matter in controversy, and where it acts in aid of its own jurisdiction to render its orders or decrees, or the title or disposition under them of the property within that jurisdiction, effectual, it may notwithstanding section 720, Revised Statutes, now section 265 of the Judicial Code, enjoin or restrain all proceedings in the state court which would have the effect of defeating or impairing its jurisdiction, or the orders, decrees or titles it has made or is making in the exercise thereof." *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448.

Protection of federal jurisdiction.—Where the injunctive process of a federal court is invoked to protect its own jurisdiction, this section has no application. *Sherman Nat. Bank v. Shubert Theatrical Co.*, (S. D. N. Y. 1916) 238 Fed. 225.

Where the federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding this section, restrain all proceedings in a state court which have the effect of defeating or impairing its jurisdiction. *Jackson v. Parkersburg, etc., Electric R. Co.*, (N. D. W. Va. 1916) 233 Fed. 784.

Suits against a corporation in a state court may be enjoined by a federal court which has appointed a receiver for the corporation. *Jackson v. Parkersburg, etc., Electric Co.*, (N. D. W. Va. 1916) 233 Fed. 784.

Proceedings in probate court.—In *Smith v. Jennings*, (C. C. A. 5th Cir. 1915) 238 Fed. 48, 151 C. C. A. 124, holding that a federal District Court had no power to set aside the appointment of temporary administrators of a decedent's estate, alleged to have been obtained by fraud of the parties, and to enjoin said administrators from interfering with the receivers, the

court said: "The federal courts have no authority to stay proceedings of state courts, while they are in progress and before they are concluded by final judgment or decree, except in aid of bankruptcy proceedings or of their own previously acquired jurisdiction."

Proceedings in foreclosure.—In *Hyatts-ville Bldg. Assoc. v. Bonie*, (1916) 44 App. Cas. (D. C.) 408, after the alleged default of appellee mortgagee of Maryland real estate, the appellant mortgagor instituted in the state Circuit Court a statutory proceeding for foreclosure and advertised the property for sale in accordance with the state statutes. Before the sale took place appellee filed his bill in the District of Columbia Supreme Court and obtained a temporary restraining order, which, upon a later hearing, was continued and an appeal granted. The decree was reversed with instructions to dismiss the bill, as being one to enjoin "proceedings," etc., and in violation of the federal statute, now Judicial Code, § 265, 1912 Supp., p. 242.

Proceedings under unconstitutional act.—Equity has jurisdiction of a suit to enjoin the enforcement of a state or local law, on the ground that such enforcement will deprive the complainant of rights secured to him by the Constitution and laws of the United States. *Phoenix R. Co. v. Geary*, (1915) 239 U. S. 277, 36 S. Ct. 45, 60 U. S. (L. ed.) 287; *Halsey v. Merrick*, (E. D. Mich. 1915) 228 Fed. 805; *Central Consumers' Co. v. Austin*, (N. D. Ala. 1916) 238 Fed. 616.

"Where a state has provided, as is its right, a complete legislative scheme for the fixing of rates, those rights should not be interfered with, nor the proceedings of the state arrested, until the last legislative step has been taken, and it may definitely be seen whether the act of the state as a finality ignores or infringes upon the rights of the complaining party; until such time it cannot be said that the state authorities have violated those rights, or refused to observe them, and until that state is reached it is not within the province of the federal courts to interfere." *Palermo Land, etc., Co. v. California R. Commission*, (N. D. Cal. 1915) 227 Fed. 708, so declaring where the statute permitted an application for a rehearing.

Where the right of a street railway company to increase rates was claimed to be based on the fact that certain ordinances constituted contracts beyond the power either of the state or the municipality to impair, it was held to be improper for a federal court to grant an injunction preventing action by a state board, clothed by the state with legislative power over rates and whose jurisdiction had been invoked, before the board had adjudicated the question or had an opportunity to do so. *Trenton, etc.,*

Traction Corp. v. Trenton, (D. C. N. J. 1915) 227 Fed. 502.

Where a state legislature has clothed a local board with power to adjudicate questions as to rates which a street railway company may charge, and the jurisdiction of that board has been invoked, it would be improper for a federal court to interfere by injunction to restrain proceedings before it on the supposition that the board's decision may impair contractual rights which cannot be impaired by the state. *Trenton, etc., Traction Corp. v. Trenton*, (D. C. N. J. 1915) 227 Fed. 502.

Criminal cases.—But while it is "settled that while a court of equity, generally speaking, has 'no jurisdiction over the prosecution, the punishment or the pardon of crimes or misdemeanors' (*In re Sawyer*, [1888] 124 U. S. 200, 210 [8 S. Ct. 482, 31 U. S. (L. ed.) 402]) a distinction obtains, and equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property." *Truax v. Raich*, (1915) 239 U. S. 33, 36 S. Ct. 7, 60 U. S. (L. ed.) 131, Ann. Cas. 1917B 283, L. R. A. 1916D 545. See to same effect *Central Consumers' Co. v. Austin*, (N. D. Ala. 1916) 238 Fed. 616.

Proceedings under constitutional act.—A federal court will not interfere to restrain the enforcement of a state statute, admitted to be valid, on the ground that the law officer of the state in seeking to enforce it is wrongfully construing it. *Central Consumers' Co. v. Austin*, (N. D. Ala. 1916) 238 Fed. 616.

Collection of taxes.—But "the general rule is that courts will not interfere by injunction with the collection of the public revenue, on the ground that a tax is illegal, unless it clearly appears that the complainant has no adequate legal remedy, and that a statutory provision for the payment of taxes under protest and a legal action to recover them back affords an adequate legal remedy." *Augusta v. Timmerman*, (C. C. A. 4th Cir. 1916) 233 Fed. 216, 147 C. C. A. 222.

There exists no cloud upon a title which justifies the interference of the court of equity, when the alleged fatal defect in the tax levy or other proceeding appears on the face of the record, requiring no evidence aliunde to make it plain. *Augusta v. Timmerman*, (C. C. A. 4th Cir. 1916) 233 Fed. 216, 147 C. C. A. 222.

Bankruptcy cases.—This provision distinctly excepts cases where an injunction is authorized by the bankruptcy law, and insolvency proceedings commenced in a state court may be enjoined by a federal court within four months after they are commenced. *Ohio Motor Car Co. v. Eisman Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 512.

Vol. IV, p. 517, sec. 721.

Decisions of state courts in general.—It has been said that while the decisions of a state court upon a general legal proposition not covered by statute are not binding upon the federal courts they are naturally given considerable weight by the latter. *Paterlini v. Memorial Hospital Ass'n*, (W. D. Pa. 1915) 229 Fed. 838.

And although a question does not depend upon the construction of a state statute, yet if it involves the application of principles of law to local conditions, it has been held that the ruling of the state court should be controlling in a federal court. *Old Colony Trust Co. v. Tacoma*, (C. C. A. 9th Cir. 1916) 230 Fed. 389, 144 C. C. A. 531.

Question of general jurisprudence or commercial law.—The doctrine declared in the *Swift v. Tyson* Case, (1842) 16 Pet. 1, 10 U. S. (L. ed.) 865, has steadily advanced beyond the actual question involved in that case, and it may be said that at the present time it is the settled general doctrine of the federal courts that they will themselves determine, without regard to the decisions of the highest courts of the state, as binding authority, all general questions of the common law involving matters of mercantile or commercial law or of general jurisprudence. *Town of Newbern v. Barnesville Nat. Bank*, (C. C. A. 6th Cir. 1916) 234 Fed. 209, 148 C. C. A. 111.

As to doctrines of commercial law and general jurisprudence the federal courts exercise their own judgment, but even in such cases they lean toward an agreement of views with the state courts, if the question seems to them balanced with doubt. And especially should the doctrine of the highest court of the state on such a question be followed where it is well supported both by reason and upon authority. *Sim v. Edenborn*, (1916) 242 U. S. 131, 37 S. Ct. 36, 61 U. S. (L. ed.) 199.

State constitutions and statutes in general.—Some cases, taken by themselves, lend color to the view that the general rule is for the federal courts to decide for themselves questions arising under state constitutions and statutes, and the exception is to follow the decisions of the state courts when the state decisions have become rules of property. In spite, however, of the constant tendency of the federal courts to deny the conclusive effect of state decisions under various circumstances, it may be said that, even at the present time, to follow the state decisions is the general rule, and to refuse to follow them the exception, so far as questions under state constitutions and statutes are concerned. *Iowa Portland Cement Co. v. Lamandola*, (C. C. A. 8th Cir. 1915) 227 Fed. 823, 142 C. C. A. 347; *Quinette v. Pullman Co.*, (C. C. A. 8th Cir. 1916)

229 Fed. 333, 143 C. C. A. 453; *Lauderdale County v. Kittel*, (C. C. A. 5th Cir. 1916) 229 Fed. 593, 143 C. C. A. 615; *Old Colony Trust Co. v. Tacoma*, (C. C. A. 9th Cir. 1916) 230 Fed. 389, 144 C. C. A. 531; *Memphis v. St. Francis Levee Dist.*, (E. D. Ark. 1916) 231 Fed. 217; *Gardner v. Western Union Tel. Co.*, (C. C. A. 8th Cir. 1916) 231 Fed. 405, 145 C. C. A. 399; *Atlas Portland Cement Co. v. Hagen*, (C. C. A. 8th Cir. 1916) 233 Fed. 24, 147 C. C. A. 94; *Pennsylvania R. Co. v. Pedrick*, (N. D. N. Y. 1916) 234 Fed. 781.

On writ of error to a state court, the decision of the latter that a municipal ordinance is not repugnant to the state constitution settles the question for the federal Supreme Court. *Thomas Cusack Co. v. Chicago*, (1917) 242 U. S. 526, 37 S. Ct. 190, 61 U. S. (L. ed.) 472, Ann. Cas. 1917C 594, L. R. A. 1918A 136.

So in a recent case it is said to be elementary that the federal courts ordinarily are bound by the decisions of the Supreme Court of a state as to the interpretation and construction of a state statute. *Quinette v. Pullman Co.*, (C. C. A. 8th Cir. 1916) 229 Fed. 333, 143 C. C. A. 453.

But a federal court must decide a point for itself arising under a state statute when it has not been passed on by the courts of the state. *Hamilton v. Loeb*, (E. D. Pa. 1910) 179 Fed. 728. See to same effect *Pennsylvania R. Co. v. Pedrick*, (N. D. N. Y. 1916) 234 Fed. 781.

Rights accrued before construction or under prior construction.—Where the verifications to certain declaratory statements of mining claims were defective and all right to the premises involved had become fixed and vested by patents prior to a decision by the state court that such locations were void because of such verification, it was held that it was the right of the parties to have and the duty of the federal court to exercise its independent judgment upon the validity and effect of such statements and locations, and though for comity and to avoid confusion the court would lean to agreement with the state tribunal, it would refuse to follow it if, in its opinion, the rule of decision was unsound. *Clark-Montana Realty Co. v. Butte, etc., Copper Co.*, (D. C. Mont. 1916) 233 Fed. 547.

Corporate existence.—Whether a corporation is a corporation de jure is a question which must be answered by the statutes and decisions of the state in which it is incorporated. *American Ball Bearing Co. v. Adams*, (N. D. Ohio 1915) 222 Fed. 967.

Decedents' estates.—Decisions of the state court have been followed as to claims against the estate and the enforcement thereof. *Williams v. Benedict*, (1850) 8 How. 107, 12 U. S. (L. ed.) 1007; *Dodd v. Ghiselin*, (E. D. Mo. 1886) 27 Fed. 405.

See to same effect *Security Trust Co. v. Black River Nat. Bank*, (1902) 187 U. S. 211, 23 S. Ct. 52, 47 U. S. (L. ed.) 147; *Hale v. Coffin*, (C. C. A. 1st Cir. 1903) 120 Fed. 470, 57 C. C. A. 528; *Gasquet v. Fenner*, (E. D. La. 1916) 235 Fed. 997.

Competency of witnesses.—In *Fowler v. Hecker*, (1860) 4 Blatchf. 425, 9 Fed. Cas. No. 5,001, it was held that a state statute making the defendant a competent witness was binding on the federal court, and therefore a defendant made liable by such a statute to examination as a witness for the plaintiff was liable to be attached for contempt in not obeying a subpoena commanding him to attend and be examined on the trial of an action at common law in a federal court.

But in the trial in a federal court of an offense against the United States it has been held that though a witness by reason of his conviction in a state court for an infamous crime is incompetent to testify in a court within that state, the federal court will not regard the conviction as binding upon it so as to require the exclusion of his testimony. *Brown v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 353, 147 C. C. A. 289, L. R. A. 1917A 1133.

Limitation of actions.—In the absence of provisions in the federal statutes expressly regulating the matter, the statutes of the several states with regard to the limitation of actions both real and personal are considered as controlling on the federal courts in actions at law instituted in such courts, and the federal courts will as a general rule follow the construction given by the highest court of the state to such a statute, such statutes being regarded as "laws of the several states" which, except when the Federal Constitution, treaties or statutes of the United States otherwise require, must be regarded as rules of decision in trials at law within the meaning of the section of the Judiciary Act under annotation. *Quinette v. Pullman Co.*, (C. C. A. 8th Cir. 1910) 229 Fed. 333, 143 C. C. A. 453; *Merko v. Sturm, etc., Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 68, 147 C. C. A. 138.

"That the limitation of action is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions, is as well settled in the national courts as any proposition of law." *Memphis v. St. Francis Levee Dist.*, (E. D. Ark. 1916) 231 Fed. 217.

In *South Georgia R. Co. v. South Georgia Grocery Co.*, (1915) 17 Ga. App. 349, 86 S. E. 939, it was so held in a case of an action based on the Interstate Commerce Act.

And while a federal court sitting as a court of equity is not bound by the state statute of limitations, it is proper for it

to follow that statute unless facts are shown which render its application inequitable. *Smith v. Smith*, (C. C. A. 9th Cir. 1915) 224 Fed. 1, 139 C. C. A. 465; *Kentucky Coal, etc., Development Co. v. Kentucky Union Co.*, (C. C. A. 6th Cir. 1911) 187 Fed. 945, 110 C. C. A. 93.

Negligence and contributory negligence.

—The federal courts exercise their independent judgment on common-law questions of negligence and adopt the view, irrespective of the decisions of the state courts, that the burden of proving contributory negligence is upon the defendant. *Clark v. Kansas City, etc., R. Co.*, (C. C. A. 6th Cir. 1904) 129 Fed. 341, 64 C. C. A. 19; *Bowker v. Donnell*, (S. D. N. Y. 1915) 226 Fed. 359.

Undoubtedly where the question of burden of proof is a matter of substantive right and involves a question of general law, which the federal courts will determine independently of the decisions of the state courts, they will not follow the state decisions on the question of the burden of proof. Thus the federal courts will not follow, in the absence of a controlling state statute, the decisions of the state court as to the burden of proving contributory negligence. *Clark v. Kansas City, etc., R. Co.*, (C. C. A. 6th Cir. 1904) 129 Fed. 341, 64 C. C. A. 19; *Bowker v. Donnell*, (S. D. N. Y. 1915) 226 Fed. 359.

Questions of contributory negligence, in the absence of a local statute regulating the matter, are considered by the federal courts questions of general law as to which the federal courts are not required to follow state decisions. Thus the doctrine of the federal courts that contributory negligence is an affirmative defense which must be established by a preponderance of the evidence is not affected by a different common-law rule in the state where the action arises. *Bowker v. Donnell*, (S. D. N. Y. 1915) 226 Fed. 359.

Master and servant—Defense of assumption of risk as affected by statute.—It has been expressly held that federal courts are bound by the decision of the highest state court on this subject. *Inland Steel Co. v. Kachwinski*, (C. C. A. 7th Cir. 1907) 151 Fed. 219, 80 C. C. A. 571; *Welsh v. Barber Asphalt Paving Co.*, (C. C. A. 9th Cir. 1909) 167 Fed. 465, 93 C. C. A. 101. And in *E. S. Higgins Carpet Co. v. O'Keefe*, (C. C. A. 2d Cir. 1897) 79 Fed. 900, 51 U. S. App. 74, 25 C. C. A. 220, and *Chicago-Coulterville Coal Co. v. Fidelity, etc., Co.*, (W. D. Mo. 1904) 130 Fed. 957, the courts, without expressly declaring that the federal courts were bound by the construction placed upon the statute by the highest court of the state, allude to such construction as though it were conclusive. *Columbia Box Co. v. Saucier*, (C. C. A. 8th Cir. 1914) 213 Fed. 310, 129 C. C. A. 656; *Atlas Portland Cement Co. v. Hagen*, (C. C. A. 8th Cir. 1916) 233 Fed. 24, 147 C. C. A. 94.

Effect of state statute generally.—On the other hand, when the question involved as to the liability of a master for injuries received by his servant is regulated by a local state statute, the federal courts must ordinarily determine the question in the light of such statute as construed by the highest court of the state. *Iowa Portland Cement Co. v. Lamandola*, (C. C. A. 8th Cir. 1915) 227 Fed. 823, 142 C. C. A. 347.

Safeguarding machinery.—The construction and effect of a state statute requiring owners of mills and factories to safeguard their machinery is not a matter of general, but of local, law, and the decisions of the highest court of the state thereon are binding on the federal courts. *Welsh v. Barber Asphalt Paving Co.*, (C. C. A. 9th Cir. 1909) 167 Fed. 465, 93 C. C. A. 101; See to same effect *Iowa Portland Cement Co. v. Lamandola*, (C. C. A. 8th Cir. 1915) 227 Fed. 823, 142 C. C. A. 347; *Atlas Portland Cement Co. v. Hagen*, (C. C. A. 8th Cir. 1916) 233 Fed. 24, 147 C. C. A. 94.

Recording and filing acts.—Federal courts are bound to follow the decisions of the state courts in the construction of their local recording acts, if there has been a uniform course of decision respecting them. And this has been done notwithstanding a contrary view has been taken in a decision prior to that in the state court. *Ward v. American Agricultural Chemical Co.*, (C. C. A. 4th Cir. 1916) 232 Fed. 119, 146 C. C. A. 311.

Decisions have been followed where the questions have been as to the necessity of recording an assignment of choses in action. *Ward v. American Agricultural Chemical Co.*, (C. C. A. 4th Cir. 1916) 232 Fed. 119, 146 C. C. A. 311.

Presentation of claims for damages.—A construction by the state Supreme Court of a constitutional provision that "Any provision of any contract or agreement, expressed or implied, stipulating for notice or demand other than such as may be provided by law, as a condition precedent to establish any claim, demand or liability, shall be null and void" has been held to be binding on a federal court. It was, however, held that the provision was not applicable in the case of an interstate telegraph company so as to invalidate a clause as to presenting claims for damages or penalties in connection with the transmission of an interstate message. *Gardner v. Western Union Tel. Co.*, (C. C. A. 8th Cir. 1916) 231 Fed. 405, 145 C. C. A. 399.

Vol. IV, p. 530, sec. 723.

Section declaratory.—"The provision of the United States statutes forbidding equity suits in federal courts where there is an adequate remedy at law is declaratory of what was always the law and was

intended to emphasize the rule." *Willis v. O'Connell*, (S. D. Ala. 1916) 231 Fed. 1004.

Nature of remedy at law required.—It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. *Goldschmidt Thermit Co. v. Primos Chemical Co.*, (E. D. Pa. 1915) 225 Fed. 769; *Thompson v. Emmett Irrigation Dist.*, (C. C. A. 9th Cir. 1915) 227 Fed. 560, 142 C. C. A. 192; *New York Destructor Co. v. Atlanta*, (N. D. Ga. 1916) 232 Fed. 746.

The complainant on coming into a court of equity for equitable relief must show by facts pleaded that the interposition of a court of equity is necessary or proper, that he has no full and adequate remedy at law. *Thompson v. Emmett Irrigation Dist.*, (C. C. A. 9th Cir. 1915) 227 Fed. 560, 142 C. C. A. 192; *Willis v. O'Connell*, (S. D. Ala. 1916) 231 Fed. 1004; *New York Destructor Co. v. Atlanta*, (N. D. Ga. 1916) 232 Fed. 746.

Remedy by action for damages or by mandamus.—In *Northern Pac. R. Co. v. Van Dusen Harrington Co.*, (C. C. A. 8th Cir. 1917) 245 Fed. 454, 157 C. C. A. 616, L. R. A. 1918C 883, it was held that there was no jurisdiction in equity of a bill by the owner of a carload of wheat to compel an interstate railroad company to issue to the plaintiff a bill of lading for transportation of the car to a place on a connecting line in another state, as an action at law for damages would afford a complete and adequate remedy, and besides, according to plaintiff's theory, he could obtain a writ of mandamus to compel issuance of such bill of lading under section 23 of the Interstate Commerce Act, and if so, this would be an adequate remedy at law.

In a suit by several patrons of an interstate telephone company, suing in behalf of themselves and all others similarly situated, praying that the company be required to repair its plants, lines, etc., and to observe its duties and obligations as an interstate carrier and as a public utility under the several acts of Congress and its contracts, alleging that the company had suffered its facilities to become so greatly out of repair that it was impossible for complainants to obtain and have the service for which they pay, it was contended that each of the complainants might find relief through appeal to the Interstate Commerce Commission, or through appeal to the state Utilities Board, or in an action for damages, or by an action in mandamus, but the court, upon consideration of each of the suggested remedies, in view of the facts of the case, held that the futility of a resort to either remedy was so plain as to warrant the interposition of a court of equity.

Stephens v. Ohio State Telephone Co., (N. D. Ohio 1917) 240 Fed. 759.

Effect of state rules.—The jurisdiction of a federal court sitting in equity cannot be enlarged or limited by state constitutional provisions. *McLaughlin v. St. Louis Southwestern R. Co.*, (C. C. A. 8th Cir. 1916) 232 Fed. 579, 146 C. C. A. 537.

The jurisdiction of a federal court of equity is not subject to limitations or restraint by state legislation. *Waterman v. Canal-Louisiana Bank, etc., Co.*, (1909) 215 U. S. 33, 30 S. Ct. 10, 54 U. S. (L. ed.) 80; *Union Pac. R. Co. v. Flynn*, (W. D. Mo. 1910) 180 Fed. 565; *McLaughlin v. St. Louis Southwestern R. Co.*, (C. C. A. 8th Cir. 1916) 232 Fed. 579, 146 C. C. A. 537.

Right to jury trial.—If a plain and adequate remedy exists at law, a defendant cannot be called upon to submit his rights to the decision of the court of equity, he having a constitutional right to a trial by jury. *Berwind-White Coal Min. Co. v. Eastern Steamship Corp.*, (S. D. N. Y. 1916) 228 Fed. 726.

And it has also been held that the common law being competent to give to a party a sufficient remedy for damages caused by a negligent collision of vessels, an order giving leave to bring actions at law in such a case against a receiver will not be modified so as to limit the actions to suits in equity on the admiralty side of the court, there being no power to deprive the plaintiffs of their right to trial by a jury. *Berwind-White Coal Min. Co. v. Eastern Steamship Corp.*, (S. D. N. Y. 1916) 228 Fed. 726.

Enforcement of rule.—In the federal courts relief will be denied in cases in equity where the remedy at law is plain, adequate, and complete, though the question was not raised by defendants in their pleading nor suggested by the counsel in their argument, because it is a question of jurisdiction, and no admission of the parties can change the law or give jurisdiction to a court in a case of which it has no jurisdiction. *Goldschmidt Thermit Co. v. Primos Chemical Co.*, (E. D. Pa. 1915) 225 Fed. 769; *Berwind-White Coal Min. Co. v. Eastern Steamship Corp.*, (S. D. N. Y. 1916) 228 Fed. 726.

Cloud on title.—Where a corporation has neglected to pay interest on bonds issued by it and it is asserted that some of the bonds were issued without consideration, a court of equity, for the purpose of removing a cloud on title, has jurisdiction of a suit to determine whether illegal bonds have been issued by the corporation, and, if so, by a proper decree to remove the cloud cast upon such issue and upon the title of the holders of the legal bonds of the corporation, and especially must this be so where the bonds are to mature serially, and no bond will mature or become due and payable, for several

years, and until that date no judgment at law can be obtained on any of the bonds determining their validity." *Thompson v. Emmett Irrigation Dist.*, (C. C. A. 9th Cir. 1915) 227 Fed. 560, 142 C. C. A. 192.

Accounting.—A prayer for an accounting in a bill in equity will not give the court jurisdiction where the plaintiff's asserted claims are legal rights, and it does not appear that the plaintiff has not a plain, adequate, and complete remedy at law. *National Surety Co. v. Washington Iron Works*, (W. D. Wash. 1917) 243 Fed. 260.

Collection of judgments.—The mere fact that the defendant cannot be compelled to pay a judgment at law cannot make the plaintiff's remedy there inadequate, nor can such fact render the plaintiff's injury irreparable in such sort as to authorize a court of equity to take equitable cognizance of plaintiff's grievance. *Willis v. O'Connell*, (S. D. Ala. 1916) 231 Fed. 1004.

Vol. IV, p. 534, sec. 725.

Statute one of limitation.—"It is settled that the statute is a limitation, through definition, upon the powers of inferior federal courts to punish contempts by summary process." *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

"*Interference with the proceedings of a grand jury* in the performance of its functions is as truly a contempt of court as is interference with the proceedings of a petit jury, either in the course of a trial or during its deliberation." *U. S. v. Providence Tribune Co.*, (R. I. 1917) 241 Fed. 524, where the court denied a motion to dismiss an information for alleged contempt of court in the publication of a newspaper article with the evident intention, said the court, "to disclose as near as seems advisable the identity of the persons to whom the scarehead relates, and the names of witnesses and nature of evidence to be produced against them before the grand jury." The headings and subheadings of the article were as follows: "Prominent Physicians Involved in Federal War on Cocaine Dealers. Man and Woman Arrested on Conspiracy Charge May Become Witnesses for the Government. Before Grand Jury."

Newspaper criticisms.—"The language of this measure does not exclude its application to newspapers." *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

"That the publication by a newspaper of the city in which a court is sitting of an article tending to obstruct the administration of justice in proceedings pending in that court is within section 268 of the Judicial Code is so well settled as to require no discussion." *U. S. v. Providence Tribune Co.*, (R. I. 1917) 241 Fed. 524.

"The power is curtailed, not wholly destroyed, so that criticisms which tend to reflect generally upon the court, either by libeling the occupant of the bench or by criticising proceedings and processes, but which have no tendency to affect a cause under consideration, are not reached by the statute, although they may, in a general way, obstruct the administration of justice, particularly through fostering a disrespect for the tribunal." *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

The right freely to comment on judicial conduct is unquestioned; just as plain as the corollary that the courts have a right—the people have a right—to expect newspapers to criticise the courts fairly, to argue their criticism from truthful, not false, premises. *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio, 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

But "any newspaper comment which tends to make the position of a litigant difficult before the court hampers the efforts of the court to adjudicate the issue fairly and dispassionately." *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

"A proceeding for newspaper contempt partakes of the incidents of any other action for defamation, and other publications on the same subject before and after the date of that declared on may be offered for interpretation, at least, on the matter of quo animo, as in libel." *U. S. v. Toledo Newspaper Co.*, (N. D. Ohio 1915) 220 Fed. 458, *affirmed* (C. C. A. 6th Cir. 1916) 237 Fed. 986, 150 C. C. A. 636, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

Judicial authority summarily to punish as for a criminal contempt the publication in a newspaper of articles and cartoons having reference to pending judicial action which tended and were intended to provoke public resistance to an injunction order, should one be made, and amounted to an attempt unduly to influence the judge with reference to his decision in the matter pending before him, was recognized

and sanctioned, not negated, by the provisions of this section. *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

Comment and cartoons having reference to pending judicial action, published at the place where the proceedings were pending, in a daily newspaper with a large circulation, may fairly be said to "obstruct the administration of justice," within the meaning of this section, where such is the reasonable tendency of such publications, although it is not shown that the newspapers containing them were seen by the judge, or were circulated in the court room, and although there is no proof that the mind of the judge in the particular case was influenced, or his purpose to do his duty obstructed or restrained, by the publications. *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) —.

In *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, Ann. Cas. 1917C 1084, L. R. C. A. 1917E 703, while a criminal case was on trial before a jury in Helena, Mont., a daily newspaper in the city printed an article for which an information for contempt was brought against it and its editor and manager. The information charged that this article was not based upon the facts introduced in evidence on the trial of the case, but was written and published for the purpose of giving to the public generally, and to all persons who should read said newspaper and the said article, certain facts relating to the past life of the defendant, and to inform the jury, and the members thereof who might read the newspaper and the article, of certain facts concerning the defendant which were highly prejudicial to his character and reputation, and would, when read by the jury, or any members thereof, tend to bias and prejudice them against the defendant and prevent the jury, and the members thereof who had read the article, from giving the defendant a fair and impartial trial, for the reason that it brought to their attention certain facts concerning the life of the defendant which were not material to the issues of the cause and could not be proven on the trial of the cause against the defendant unless on the trial of the cause he had taken the witness stand in his own behalf, or placed his good character in issue. It was not denied that the publication obstructed the progress of the cause on trial, and compelled the court to discharge the jury, resulting, as the court found as a fact, in the infliction of pecuniary damages to the government, in costs uselessly incurred, amounting to \$617. It was held that the publication constituted a punishable contempt.

Place of publication not controlling.—

Where the failure of a trial was caused by a publication in a newspaper the question was declared to be "not where the press runs but where the publication circulates." The court said: "So long as jury and judge are engaged in a trial, it is of no moment that the improper influence extended over them was miles away from the courtroom rather than adjoining it. The effect is the same, the consequences the same, the evil as great, and it is the effect, consequences, evil, the law guards against." *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787.

The words "so near thereto."—"So near" in the statute means not so far off, not so distant but what it may obstruct the administration of justice. It is not a question of linear measurement, but of probable effect." *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787.

This section was not intended to limit the power of the court to punish for contempt to be exercised only for the purpose of insuring order and decorum in its presence. "Like the law of constructive presence in criminal cases, the misbehavior is committed where it takes effect," and publication of a newspaper article calculated to influence jurors in a pending trial may constitute a contempt. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, Ann. Cas. 1917C 1084, L. R. A. 1917E 703.

Nature of contempt proceedings.—Upon examination and consideration of the proceeding for violation of an injunctive order involved in *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, it was there held that the proceeding was civil in nature and not distinguishable in that behalf from *Gompers v. Buck Stove, etc., Co.*, (1911) 221 U. S. 418, 31 S. Ct. 492, 55 U. S. (L. ed.) 797, 34 L. R. A. (N. S.) 874.

Facts stated on information and belief.

—An information charging a constructive contempt particularly and specifically charging in detail the facts constituting the alleged contempt has been held sufficient when filed by the United States attorney for the district, though verified by him to the effect that the facts stated are true and correct upon information and belief. *Creekmore v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 743, 150 C. C. A. 497.

Defenses.—For publication of an article in a newspaper constituting a contempt of court, it is within the power of the court to punish the managing editor, though he was ignorant of the contents of the article, where he failed to perform his duty in supervising the publication, and was negligent in permitting the article to be published. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240

Fed. 849, 153 C. C. A. 535, Ann. Cas. 1917C 1084, L. R. A. 1917E 703.

Purging by oath.—Where defendants in contempt proceedings put in a plea of not guilty and went to trial on that it was held that they did not bring themselves within the rule permitting them to purge themselves by putting in answers denying the contempt charges. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

The rule as to parties charged with contempt purging themselves of the charge by denial under oath has been held to be inapplicable where the charge is one of personal and overt acts. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

Punishment.—Under this statute it has been held the court has almost unlimited discretion as to the character and extent of punishment, and that the prosecutor need not specially pray for a given punishment or attempt to limit the degree of punishment. *Creekmore v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 743, 150 C. C. A. 497.

"In respect to criminal contempts the penalty is usually punitive, fine or imprisonment." *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787.

"In respect to civil contempts, the penalty is usually remedial, a fine which may be measured in some degree by the injured party's pecuniary damage and for his use." *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787.

It is not in accordance with law to impose a general sentence for the separate acts of contempt alleged and found against the defendants. The punishment for distinctly different offenses should be so separated that the court on review can analyze the evidence and determine which, if any, of the charges are sustained. *Oates v. U. S.*, (C. C. A. 4th Cir. 1915) 223 Fed. 1013, 139 C. C. A. 389.

Where there were both criminal and civil aspects in a proceeding for contempt, criminal in that it interfered with the discharge of the court's duty and obstructed justice, civil in that it proximately caused the failure of a criminal trial prosecuted by the United States and inflicted pecuniary damage on the plaintiff, it was held proper to impose a fine in amount measured by the pecuniary loss suffered by the United States from the act. *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787.

The judge may, in imposing a sentence of imprisonment, also require the payment of costs. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

Where a newspaper article constituting a criminal contempt caused a mistrial and continuance of a criminal case, the costs to which the government was subjected by reason thereof were properly used as

an element in measuring the fine imposed by the court. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 849, Ann. Cas. 1917C 1084, L. R. A. 1917E 703.

Place of imprisonment.—There is said to be nothing in this section which limits where the imprisonment shall take place except the discretion of the court. *Creekmore v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 743, 150 C. C. A. 497.

Review by writ of error or appeal.—The decision of the trial court on the facts is conclusive, and only matters of law are to be considered. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 849, Ann. Cas. 1917C 1084, L. R. A. 1917E 703.

An assignment of error that the court refused to suspend sentence and admit the defendants to bail pending the application for a writ of error has been held to be without substance where the writ of error was granted and the defendants admitted to bail on the same day the sentence was pronounced. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

Vol. IV, p. 552, sec. 737.

Omission of parties.—The doctrine is well established that where persons who otherwise might be deemed necessary or proper parties cannot be made parties because of absence from the jurisdiction or from other cause as because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in its discretion proceed with the cause without making such persons parties if the rights of the complainants and defendants can be equitably determined without them. *Lion Tractor Co. v. Bull Tractor Co.*, (C. C. A. 8th Cir. 1916) 231 Fed. 156, 145 C. C. A. 344; *Lowenthal v. Georgia Coast, etc., R. Co.*, (S. D. Ga. 1916) 233 Fed. 1010.

"It is a principle of law that where the court can do justice to the parties before it without injuring absent persons, it will do so, and shape its relief in such a manner as to preserve the right of persons not before the court. If necessary, the court may require that the bill be dismissed as to such absent parties and may generally shape its decree so as to do justice to those made parties without prejudice to such absent persons. *Payne v. Hook*, (1868) 7 Wall. 425, 19 U. S. (L. ed.) 260." *Grigsby v. Miller*, (D. C. Ore. 1916) 231 Fed. 521.

The statute and the rule merely authorized the omission of proper but not indispensable parties, including formal and nominal parties and parties with separable interests known in the federal courts as "necessary" parties. *Lowenthal v. Georgia Coast, etc., R. Co.*, (S. D. Ga. 1916) 233 Fed. 1010.

In an action by a bondholder to foreclose a mortgage given by a railroad corporation of another state to secure the payment of bonds, a trustee corporation of a different state from that of the defendant was held not to be an indispensable, although a proper, party, and a contention that the bill must be dismissed because the trustee was not a party defendant was held to be unfounded, it appearing that the trustee was not to be found in the district and had not voluntarily appeared, while the property to which the lien and mortgage securing plaintiff's bonds inhered was located within the district and the defendant corporation was a corporation of the state included therein. *Lowenthal v. Georgia Coast, etc., R. Co.*, (S. D. Ga. 1916) 233 Fed. 1010.

One or more joint makers of a contract may be sued in the district of their residence when other joint makers cannot be brought into the action because of their residence in another district. *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 373, citing *Clearwater v. Meredith*, (1858) 21 How. 489, 16 U. S. (L. ed.) 201, and *Barney v. Baltimore*, (1867) 6 Wall. 280, 18 U. S. (L. ed.) 825.

The words "found within the district" do not confer jurisdiction, unless in a patent case, as provided for in Judicial Code, § 48, 1912 Supp., p. 153, or some special case provided by other statutes. *Harasimowicz v. Pennsylvania R. Co.*, (E. D. N. Y. 1916) 232 Fed. 295.

The words "found within the district" must have significance, inasmuch as they are retained in this section while omitted from Judicial Code, § 51; and the two sections, construed together, "must mean that for the purposes of jurisdiction a single defendant must reside in the district in which the suit is brought, but when there are several defendants the court has jurisdiction of all if one or more are residents of the district and the others are found there." *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 373.

Vol. IV, p. 554, sec. 740.

A joint suit for negligence and misconduct of the directors of a national bank may be brought in a district in which either defendant resides. *Dudley v. Hawkins*, (S. D. Ga. 1917) 239 Fed. 386.

Actions to recover for personal injuries are not "local" in their nature in the sense in which that word is used in sections 52-55 of the Judicial Code, 1912 Supp., pp. 153-155, and the action must be brought in the district of the residence of the defendant, unless the question be waived. *Kuzma v. Witherbee*, (E. D. N. Y. 1915) 232 Fed. 286.

Vol. IV, p. 560, sec. 911.

Construction with R. S. sec. 914.—In any original suit in a federal court which must be commenced by a summons or other process of the court itself, such process must be signed by the clerk and issued under the seal of the court, to be valid, regardless of any different provision as to the form of a summons in the state courts, the general conformity statute not operating to waive this specific requirement as to the process in the federal courts embodied in this section. *In re Condemnation Suits*, (E. D. Tenn. 1916) 234 Fed. 443.

Process subject to requirements of section—In general.—The provisions of this section apply only to writs and processes issuing from the courts themselves. *In re Condemnation Suits*, (E. D. Tenn. 1916) 234 Fed. 443.

Notices.—Notices given by the parties are not processes of the court and are not embraced within the terms of this section. Hence in any proceeding which may be properly instituted and proceeded with upon mere notice to the parties in interest, without process from the court itself, as in condemnation proceedings, the requirements of section 911 have no application. *In re Condemnation Suits*, (E. D. Tenn. 1916) 234 Fed. 443.

Vol. IV, p. 563, sec. 914.

Construction in general.—This section is the successor of the Act of Congress of May 19, 1828, ch. 68, § 1, 4 Stat. 278, which declared that "the forms of mesne process . . . and the forms and modes of proceedings in suits in [certain] courts of the United States . . . shall be the same . . . as are now used in the highest court of original and general jurisdiction of the" states in which the federal courts are situated. In respect of this statute it was held in *Bath County v. Amy*, (1872) 13 Wall. 244, at page 250, 20 U. S. (L. ed.) 539, that: "It was a process act, designed only to regulate proceedings in the federal courts after they had obtained jurisdiction; not to enlarge their jurisdiction, . . . It is quite too much to infer from this [statute] an enlargement of jurisdiction, or an adoption of all the powers of the state courts." Section 914 must be construed in the same manner. *Sewchulis v. Lehigh Val. Coal Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 422, 147 C. C. A. 358.

Questions of jurisdiction.—Notwithstanding this provision neither the statutes of a state nor the decisions of its courts are conclusive upon the federal courts in respect to questions of jurisdiction. *Southern Photo Material Co. v. Eastman Kodak Co.*, (N. D. Ga. 1915) 224 Fed. 523.

And this Act applies only in the absence of direct legislation upon a subject

by Congress. *Berry v. Mobile, etc., R. Co.*, (W. D. Ky. 1915) 228 Fed. 395.

"The jurisdiction of the courts of the United States has been defined and limited by the Acts of Congress, and can be neither restricted nor enlarged by the statutes of a state." *Southern Pac. Co. v. Denton*, (1892) 146 U. S. 202, 13 S. Ct. 44, 36 U. S. (L. ed.) 942. See also *Webb v. Southern R. Co.*, (S. D. Ala. 1916) 235 Fed. 578.

Writs and process—On foreign corporations.—"A service in an action at law on a foreign corporation in conformity to a state statute is good in the federal courts, unless the notice thus provided is not adequate according to the rules of due process of law." *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706.

Service of process.—When the fact of the presence of the defendant is not in dispute, and only the mode or manner of the service is in question, a service in accordance with the requirements of the state statutes is a good service. *Nickerson v. Warren City Tank, etc., Co.*, (E. D. Pa. 1915) 223 Fed. 843.

But there is a wide difference between the method of serving a summons and the effect of such service when made. The first relates to the "form, manner, and order of conducting and carrying on suits." The effect of the formal act called "service" is not a question of practice at all, but one of jurisdiction, and jurisdiction in turn must be tested by substantive law. *Sewchulis v. Lehigh Val. Coal Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 422, 147 C. C. A. 358.

Courts of the United States determine for themselves the fact of the presence of the defendant within the jurisdiction, and in determining it they may or may not follow the rulings of the state courts. The statutes of the states creating a constructive presence within the jurisdiction for process service, such as acts providing for service upon the registered agents of foreign corporations, are held to include service of process by the courts of the United States. *Nickerson v. Warren City Tank, etc., Co.*, (E. D. Pa. 1915) 223 Fed. 843.

If actions are started in a state court and removed into a federal court, the sufficiency of the service under the state law is still tested by the necessities required to give jurisdiction in an action instituted at the outset in the federal court. *Goldrey v. Morning News*, (1895) 156 U. S. 518, 15 S. Ct. 559, 39 U. S. (L. ed.) 517. But when an action is started in the United States court, the statutes creating jurisdiction and relating to the service of papers now embodied in Judicial Code, §§ 24 to 27 and 40 to 68, can in no way be superseded by the laws of the state. The provisions of R. S. sec. 914 do not enlarge the specific enactments of the sections mentioned. On the contrary, they are

merely applicable, so far as they may be used, to carry out those sections. *Vitkus v. Clyde Steamship Co.*, (E. D. N. Y. 1916) 232 Fed. 288.

A motion to quash a summons served upon a foreign corporation not doing business in the state was a proper mode of challenging jurisdiction, notwithstanding the objection could have been taken under the local law only by demurrer. *Meisukas v. Greenough Red Ash Coal Co.*, (1917) 244 U. S. 54, 37 S. Ct. 593, 61 U. S. (L. ed.) 987.

Equity courts.—Equity causes are expressly excepted from the operation of the conformity statute (the text R. S. sec. 914); with the result that the practice, pleadings, and forms and modes of procedure in such causes are uniform in the United States courts, and are not governed by state laws, statutory or customary. *U. S. v. Calcasieu Timber Co.*, (C. C. A. 5th Cir. 1916) 236 Fed. 196, 149 C. C. A. 386.

So the jurisdiction of a federal court sitting in equity cannot be enlarged or extended by state statutes or procedure. *Crown Orchard Co. v. Dennis*, (D. C. S. C. 1915) 220 Fed. 516. See also, to same effect *Brown v. Fletcher*, (S. D. N. Y. 1917) 239 Fed. 360.

Criminal cases.—That the federal courts, in criminal cases, are not governed by state statutes, is well settled. *U. S. v. Bopp*, (N. D. Cal. 1916) 232 Fed. 177.

Real party in interest.—If the assignment to the plaintiff of a contract sued on was valid the plaintiff is the real party in interest, and as such entitled, under the practice in some states, to maintain the action in its own name. *Arkansas Val. Smelting Co. v. Belden Min. Co.*, (1888) 127 U. S. 379, 8 S. Ct. 1308, 32 U. S. (L. ed.) 246. See also to same effect *Gibson v. Victor Talking Machine Co.*, (D. C. N. J. 1916) 232 Fed. 225.

Pleading.—The statute requires the federal courts to conform to the mode of pleading of the state in which the court sits, and when the state adheres to the system of pleading which recognizes the lines that separate the forms of action at common law it will be followed by such courts. *Kalloch v. Hoagland*, (C. C. A. 6th Cir. 1917) 239 Fed. 252.

A federal court will follow a state rule as to whether a cause of action is entire. *Beckwith v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 223 Fed. 858.

And where, according to the practice in a state, actions *ex delicto* and *ex contractu* cannot be joined, the same rule will be followed in the federal court. *Tiana v. Chicago, etc., R. Co.*, (W. D. Wash. 1915) 228 Fed. 824.

The practice in a state court as to bills of particulars will be followed in a federal court in that state, where such practice will save time, labor and expense in

the trial of the real controversy. *Wetmore v. Goodwin Film, etc., Co.*, (D. C. N. J. 1915) 226 Fed. 352.

Amendments.—A writ of *scire facias* to enforce a forfeited bail bond may be amended so as to show the jurisdictional fact (assuming it to be jurisdictional), which did not appear of record, that the offender was bailed by one qualified to admit to bail, where such amendment would be allowable under the state statute. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Burden of proof.—In Delaware, etc., *R. Co. v. Welshman*, (C. C. A. 3d Cir. 1916) 229 Fed. 82, 143 C. C. A. 358, L. R. A. 1916E 816, the court applied and approved *Erie R. Co. v. Schmidt*, (C. C. A. 3d Cir. 1915) 225 Fed. 513, 140 C. C. A. 655, as to the effect to be given to the New Jersey statute relating to the care of persons crossing a railroad crossing at which there is a guard or warning safety device.

In the assessment of damages, whether in actions in contract or tort, a federal court should apply the rules existing and applicable in the state court; such assessment being a matter of practice. *Loewe v. Union Sav. Bank*, (D. C. Conn. 1915) 226 Fed. 294.

Submission of case to jury.—The statutes, rules and practice of the state and state courts of the state in which the case is tried have no application in the submission of a case to the jury. *U. S. v. Oppenheim*, (N. D. N. Y. 1915) 228 Fed. 220.

Notice before entry of judgments.—Provisions in a state statute as to notice before entry of judgment need not by reason of this section be followed where the parties have by stipulation agreed otherwise. *Nelson v. McMillan*, (Ia. 1916) 156 N. W. 323.

Vacating or modifying judgments.—In *Forty Fort Coal Co. v. Kirkendall*, (M. D. Pa. 1915) 233 Fed. 704, the court said: "However, it will not be denied that many of the state law courts have and exercise this power. In some states it is expressly conferred by statute; in others it is considered one of the 'inherent powers' of the law courts."

Summary judgment against sureties on appeal bond.—The practice of rendering a summary judgment against sureties on an appeal bond, upon affirmance of the decree appealed from, has been introduced by statute in many states; and this practice is followed by the federal courts in actions at law. Although the adoption of state procedure is not obligatory upon the federal courts when sitting in equity, they have frequently rendered summary judgment against sureties on appeal bonds. *Pease v. Rathbun-Jones Engineering Co.*, (1917) 243 U. S. 273, 37 S. Ct. 283, 61 U. S. (L. ed.) 715, Ann. Cas. 1918C 1147.

Appellate procedure.—"The Acts of Congress give to defeated litigants in the national courts the right to a review of final judgments at law against them by writs of error, and a right to a review of final decrees in equity by appeal. These Acts grant the power and fix the jurisdiction of the federal appellate courts. They are not matters of form or practice, but matters of power and jurisdiction. They are not affected by the act of conformity (R. S. sec. 914), nor by the legislation or practice of the states." Hooven, etc., Co. v. Featherstone, (C. C. A. 8th Cir. 1901) 111 Fed. 81, 49 C. C. A. 229, quoted and followed in *Smith v. Currie*, (C. C. A. 4th Cir. 1916) 230 Fed. 803, 145 C. C. A. 113.

Appellate procedure in federal courts is "regulated exclusively by federal statutes and decisions, unaffected by statutes of the states," *U. S. v. Jack*, (1917) 244 U. S. 397, 37 S. Ct. 605, 61 U. S. (L. ed.) 1222.

Vol. IV, p. 577, sec. 915.

In using the term "common-law causes" in this section it must be assumed that Congress had in mind the distinction between a right of action given by the common law from one dependent upon a statute and intended that such distinction should be observed. It is not allowable to disregard it or by interpretation to explain it away. *Brown v. Fletcher*, (S. D. N. Y. 1917) 239 Fed. 360.

Adoption of state laws.—The effect of this section is to make the state attachment statutes laws of the United States. *Loewe v. Union Sav. Bank*, (D. C. Conn. 1915) 226 Fed. 294.

Personal service or appearance.—This section, it "has been authoritatively decided, permits the issue and levy of an attachment in an action begun here only in aid of an action in which personal service has been or can be made on the defendant." *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio, 1917) 245 Fed. 200.

Suit removed from state court.—Where in a removed case the jurisdiction of the state court and of the federal court depends exclusively upon attachment proceedings, defendant being a nonresident and not personally served with process, and the federal court discharges the attachment upon a ground that made the attachment utterly void, so that if such discharge had been made in the state court each act and step required by law to begin an action would have to be commenced over again, the federal court cannot reacquire jurisdiction by issuing a new order of attachment upon the filing of a new affidavit. *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio, 1917) 245 Fed. 200, discharging the new attachment

and striking plaintiff's petition from the files.

Vol. IV, p. 580, sec. 916.

Where a state statute prohibited issuance of an execution on a judgment against a county except as therein provided, the issuance and levy of an execution contrary to the statute was ineffective. *Clearwater County v. Pfeffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

Vol. IV, p. 587, sec. 921.

Power of court.—An order of a federal court consolidating actions for trial is within the discretionary power of the court. *Mutual Life Ins. Co. v. Hillmon*, (1892) 145 U. S. 285, 292, 12 S. Ct. 909, 36 U. S. (L. ed.) 707. See also *The Rochester*, (W. D. N. Y. 1915) 227 Fed. 203; *Hanover F. Ins. Co. v. Kinneard*, (1889) 129 U. S. 176, 9 S. Ct. 269, 32 U. S. (L. ed.) 653.

The consolidation of two or more actions in admiralty is based upon the fact that such actions are ordinarily in rem against the common res, a proceeding which necessitates a seizure of the libeled vessel to bring her within the custody and control of the court. *The Rochester*, (W. D. N. Y. 1915) 227 Fed. 203.

Vol. IV, p. 596, sec. 954.

Of the corresponding section of the Judiciary Act of 1789 (1 Stat. 91) it has been said that it "was designed to free the administration of justice in the federal courts from all subtle, artificial and technical rules and modes of proceeding in any way calculated to hinder and delay the determination of cause in those courts upon their very merits." *In re Griggs*, (C. C. A. 8th Cir. 1916) 233 Fed. 243, 147 C. C. A. 249.

Under the authority thus given amendments have been allowed by a long line of decisions of the Supreme Court covering every step in a case from the summons to the verdict and judgment. *In re Griggs*, (C. C. A. 8th Cir. 1916) 233 Fed. 243, 147 C. C. A. 249.

Discretion of court.—The exercise of the power granted under this section, when not restrained by positive rules, rests wholly in the discretion of the court. *Chicago, etc., R. Co. v. Nelson*, (C. C. A. 8th Cir. 1915) 226 Fed. 708, 141 C. C. A. 464; *Fleitman v. McKinnon*, (C. C. A. 2d Cir. 1916) 238 Fed. 98, 151 C. C. A. 174.

Effect of state statutes.—The right to allow amendments is conferred by this section and exists independently of state statutes, and is not controlled thereby. *Erie R. Co. v. Schmidt*, (C. C. A. 3d Cir. (1915) 225 Fed. 513, 140 C. C. A. 655; *In re Griggs*, (C. C. A. 8th Cir. 1916) 233 Fed. 243, 147 C. C. A. 249.

Where the complaint in an action on a note payable to one as agent declared that the note was delivered to the plaintiff, it was held proper to amend it so as to read that the note was given to the plaintiff as agent. *Fleitman v. McKinnon*, (C. C. A. 2d Cir. 1916) 238 Fed. 99, 151 C. C. A. 174.

A complaint alleging a cause of action under the laws of one state may be amended by alleging it was given by the laws of another state. *Williams v. William B. Scaipe, etc., Co.*, (D. C. N. J. 1915) 227 Fed. 922.

Erroneous writ of execution.—Where, after judgment against a county, the court, without objection, on petition, order to show cause, and answer, issued an execution, and the proceeding had every essential attribute of a proceeding in mandamus, and there was no issue of fact, the appellate court upon reversing the order for an execution as being prohibited by the state law, remanded the cause with directions to issue a mandamus against the county officers to pay the judgment, as the court would have had power to do and should have done instead of issuing an execution. *Clearwater County v. Pfeffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

Jurisdictional averments.—It has been said by the Circuit Court of Appeals that the authority conferred by this section cannot be employed to supply a lack of jurisdiction. *In re Griggs*, (C. C. A. 8th Cir. 1916) 233 Fed. 243, 147 C. C. A. 249.

A writ of scire facias to enforce a forfeited bail bond may be amended so as to show the jurisdictional fact (assuming it be jurisdictional), which did not appear of record, that the offender was bailed by one qualified to admit to bail. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Vol. IV, p. 601, sec. 955.

Foreign executor.—In *C. F. Stromeyer Co. v. Aldrich*, (S. D. N. Y. 1915) 227 Fed. 960, a motion by the plaintiff to revive against the executors of the defendant was denied. It appeared that the defendant, a citizen of Rhode Island, died after service of the summons and complaint upon him, and letters testamentary upon his estate were granted by the Probate Court in Rhode Island. The plaintiff sought to revive the action against his executors, who were citizens and residents of Rhode Island, had no assets of the estate within the state of New York and had never been served with notice of the application. The court said: "If the executors had received letters from a surrogate of New York they could be brought in as parties, irrespective of any question of their citizenship. If the court, however, has no jurisdiction of the executors because they are not qualified to sue or be sued here,

there can be no revivor. It is not shown that they are so qualified under the laws of Rhode Island and they would not be at common law."

Vol. IV, p. 604, sec. 961.

Ascertaining amount due.—Where a bond was given for the care of a feeble-minded alien and it was claimed that the recovery thereon should be for the full amount of the obligation, the court said, after referring to R. S. sec. 961: "The rule is that, where the parties to a contract have agreed that a sum shall become payable on a single event, such sum may be regarded as liquidated damages, but where the sum is made payable to secure the performance of several stipulations of varying degrees of importance, it is clear the stipulated sum must be regarded as a penalty, and not as liquidated damages for a part default. Had the breach averred been in the performance of the only condition to be performed, the argument addressed to us would have force." *U. S. v. Rubin*, (E. D. Pa. 1915) 227 Fed. 938.

Vol. IV, p. 605, sec. 997.

Parties—Waiver of irregularity.—In *McCluskey v. Marysville, etc., R. Co.*, (1917) 243 U. S. 36, 37 S. Ct. 374, 61 U. S. (L. ed.) 578, affirming a judgment of the Circuit Court of Appeals which affirmed a judgment dismissing an action by the plaintiff Nordgard, the court said: "In view of the stipulation of the parties the court below, agreeing to the substitution as plaintiff in error of the administrator of Nordgard, who died while the cause was there pending, the motion to dismiss on the ground that the writ of error was wrongfully allowed, and that the administrator is not a proper party, is based upon a mere irregularity which was waived."

Time of filing transcript.—"The Supreme Court has in numerous cases announced that it has no jurisdiction to hear and determine a case where the transcript has not been filed during the term next succeeding that in which the writ of error was sued out or the appeal was taken." *Freeman v. U. S.*, (C. C. A. 2d Cir. 1915) 227 Fed. 732, 142 C. C. A. 256, wherein several cases are cited to same point.

"It is undoubtedly within the power of a court during the judgment term to enter an order extending the term, and thus take the case out of the operation of the general rule that the power to reduce exceptions to form and have them signed and filed is, under ordinary circumstances, confined to the term at which the judgment is rendered." *Freeman v. U. S.*, (C. C. A. 2d Cir. 1915) 227 Fed. 732, 142 C. C. A. 256.

Vol. IV, p. 612, sec. 1000.

Criminal as well as civil cases are affected by this section where the judgment against the defendant awards costs, provided, however, that it is not applicable to a writ of error on a conviction of a crime punishable by death. *American Surety Co. v. U. S.*, (C. C. A. 5th Cir. 1917) 239 Fed. 680, 152 C. C. A. 514.

Rule 13 of the Fifth Circuit does not so affect this section as to prevent a bond standing as security for a superseded decree for the payment of money, at least in so far as that decree is not otherwise secured. *Pease v. Rathbun-Jones Engineering Co.*, (C. C. A. 5th Cir. 1915) 228 Fed. 273, 142 C. C. A. 565.

Vol. IV, p. 618, sec. 1007.

Liability on bond.—It has long been settled that a supersedeas bond in common form, conditioned that the appellant shall "prosecute its appeal to effect and answer all damages and costs, if it fails to make its plea good," binds the surety, upon affirmation of a judgment or decree for the mere payment of money, to pay the amount of the judgment or decree. *Pease v. Rathbun-Jones Engineering Co.*, (1917) 243 U. S. 273, 37 S. Ct. 283, 61 U. S. (L. ed.) 715, Ann. Cas. 1918C 1147, citing *Catlett v. Brodie*, 9 Wheat. 553, 6 U. S. (L. ed.) 158, and holding that the federal District Court had power to render summary judgment against the sureties on such a bond on affirmation of the decree.

Vol. IV, p. 624, sec. 1011.

The action of a trial court in not sustaining a plea in abatement interposed by the defendants to an indictment, based on the ground that it was procured by the wrongful use before the grand jury of testimony and evidence which was obtained by an illegal search and seizure of their private papers and documents, is not a ground for reversal, the plea having been heard by the trial court upon plea, answer, replication and evidence introduced by both parties, the question involved being wholly a question of fact. *Mounday v. U. S.*, (C. C. A. 8th Cir. 1915) 225 Fed. 965, 140 C. C. A. 93.

The jury's finding of facts on conflicting evidence is conclusive. *Holk v. Kizer*, (C. C. A. 8th Cir. 1916) 236 Fed. 681, 150 C. C. A. 13.

"When an action at law is tried without a jury by a federal court, and it makes a general finding, or a special finding of facts, the Act of Congress forbids a reversal by the appellate court of that finding, or the judgment thereon, 'for any error of fact' (R. S. sec. 1011), and a finding of fact contrary to the weight of the evidence is an error of fact." *Wear v. Imperial Window Glass Co.*, (C. C. A. 8th Cir. 1915) 224 Fed. 60, 139 C. C. A. 622.

Vol. IV, p. 678, sec. 601.

See notes to 1912 Supp., p. 137, Judicial Code, § 20, *infra*, p. 1313.

1909 Supp., p. 291. [Act of April 14, 1906.]

See Judicial Code, § 129, 1912 Supp., p. 195.

Orders embraced.—An interlocutory order or decree refusing, dissolving or refusing to dissolve an injunction is expressly made appealable by this section. *Ward Baking Co. v. Weber*, (C. C. A. 3d Cir. 1916) 230 Fed. 142, 144 C. C. A. 440.

Review by appeal, not by certiorari.—This section provides for a review on appeal, and certiorari to review will not lie. *In re Cogan*, (C. C. A. 2d Cir. 1915) 228 Fed. 192, 142 C. C. A. 548.

Stay of "proceedings in other respects."

—After an appeal from an interlocutory decree ordering assignment of certain patents, and an accounting of profits and damages, and enjoining use of the inventions, the trial judge denied an application to stay the accounting unless the defendant give bond to pay the amount found due. Upon subsequent renewal of the motion for stay before a circuit judge with a motion that, pending appeal, the plaintiff be enjoined from bringing any action for infringement of the assigned patents, either against defendants or their customers, and finally that the injunction be stayed, the judge refused to reconsider the decision of the trial judge, and denied the other motions, as the hardships the defendants complained of were the result of defeat. *Chadeloid Chemical Co. v. H. B. Chalmers Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 71, 155 C. C. A. 15.

A judge of the Circuit Court of Appeals may grant a stay on appeal from an order granting an injunction *pendente lite*. *Masses Pub. Co. v. Patten*, (C. C. A. 2d Cir. 1917) 245 Fed. 102, 157 C. C. A. 398.

Propriety of granting stay.—Where, in a suit against a postmaster to have certain second class matter forwarded to destination through the United States mail, but, on the day before the decision of the court in favor of the plaintiff the latter requested the defendant to withhold the matter, as other arrangements for distribution had been made, the judge of the Circuit Court of Appeals on appeal from the interlocutory order granted a stay, because the situation was such that any wrong suffered by the plaintiff could be wholly redressed by damages, apparently measured by the expense of the different transportation arrangement which had been perfected. *Masses Pub. Co. v. Patten*, (C. C. A. 2d Cir. 1917) 245 Fed. 102, 157 C. C. A. 398.

Review of case on the merits.—On appeal from an order granting an interlocutory injunction, the Circuit Court of Ap-

peals cannot properly dismiss the bill unless it is in possession of the materials necessary to enable it to do full and complete justice between the parties. Where by consent of parties the cause has been submitted for a final determination of the merits, or upon the face of the bill there is no ground for equitable relief, the Appellate Court may finally dispose of the merits upon an appeal from an interlocutory order.' But where the application for a temporary injunction was submitted upon affidavits taken ex parte, without opportunity for cross-examination, and without any consent that the court proceed to final determination of the merits, there was no basis for such determination on appeal unless it appeared upon the face of the bill that there was no ground for equitable relief. *Eagle Glass, etc., Co. v. Rowe*, (1917) 245 U. S. 275, 38 S. Ct. 80, 62 U. S. (L. ed.) —.

On appeal from an interlocutory decree, the court may reverse the decree for want of jurisdiction of the court below, and direct a dismissal of the bill on that ground. *Supreme Council, etc. v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11, where the court said: "In such appeals the Court of Appeals is authorized to review the whole of the interlocutory decree, not merely the part granting the injunction, and also to determine whether there was any insuperable objection, in point of jurisdiction or merits, to the maintenance of the suit, and if there was, to direct a final decree dismissing the bill." See *U. S. Fidelity Co. v. Bray*, 225 U. S. 205, 214, 32 Sup. Ct. 620, 56 L. Ed. 1055, and the prior decisions of the Supreme Court there cited. See, also, *Seattle, etc., Co. v. Seattle, etc., Co.*, 185 Fed. 365, 368, 107 C. C. A. 421. It is true that these decisions were before the Judicial Code became effective, and deal, not with section 129 in its present form, but with section 7 of the Court of Appeals Act as amended in 1906. We find no difference, however, material for the present purpose, between the legislation therein considered and section 129 which incorporates it in the Code, whatever the changes thereby effected in respects not here material."

Scope of review—In patent cases.—See *Racine Engine, etc., Co. v. Confectioners' Machinery, etc., Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 876, 148 C. C. A. 474, which was a patent case and related to an injunction and accounting, the court having under consideration section 7 of the Act of March 3, 1891, from which section 129 of the Code was taken.

In *Lederer v. Garage Equipment Mfg. Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 527, 149 C. C. A. 73, which was an appeal from an interlocutory decree finding that certain claims of patent granted to appellee were valid and infringed, enjoining appellant from further infringement thereof, and referring the case to a master

for an accounting of profits and damages, the court said: "On the grounds stated by Judge Geiger at the trial, we concur in the findings of fact that the claims in suit are valid and infringed. Appellant, assigning error on the court's action in striking out a portion of its answer, which denies appellee's right to an accounting of damages in addition to profits, has argued at great length that the statute which authorizes an assessment of damages in an equity suit upon a patent is violative of the Seventh Amendment to the Constitution of the United States. It suffices to say that his appeal is under section 7 of the Court of Appeals Act, section 129 of the Judicial Code (Act March 3, 1911, ch. 231, 36 Stat. 1134) . . . giving us appellate jurisdiction over interlocutory decrees of injunction, and that at this time no question can be considered concerning the rightfulness of any final accounting decree which may hereafter be rendered."

In *Ward Baking Co. v. Weber*, (C. C. A. 3d Cir. 1916) 230 Fed. 142, 144 C. C. A. 440, it was held that an appeal from a part of an interlocutory decree, which part dismissed a bill for infringement as to certain claims, gave the Circuit Court of Appeals no power to consider the rest of the decree.

In a suit to compel the transfer of patents pursuant to contract, and praying for injunction against further use of the patents and for an accounting of profits, a decree for injunction and accounting was entered and on appeal therefrom the court affirmed the decree. *Chadeloid Chemical Co. v. H. B. Chalmers Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 606, 156 C. C. A. 304.

1909 Supp., p. 292. [*Act of March 2, 1907.*]

"The quashing of a bad indictment is no bar to a prosecution upon a good one." *U. S. v. Oppenheimer*, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161.

A so-called motion to quash, setting up a previous adjudication upon a former indictment for the same offense that it was barred by the statute of limitations was in substance a plea in bar, and a judgment granting the motion and discharging the defendant without day is reviewable on writ of error under this Act. *U. S. v. Oppenheimer*, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161.

Special plea in bar—Invalidity or construction of the statute need not be a ground of the special plea in bar. *U. S. v. Oppenheimer*, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161, holding that where the defendant set up a former adjudication on a prior indictment for the same offense that it was barred by the

statute of limitations, a judgment quashing the present indictment on that ground was reviewable under this Act.

1912 Supp., p. 137, Jud. Code, sec. 20.

Judge concerned in interest.—In *In re Honolulu Consol. Oil Co.*, (C. C. A. 9th Cir. 1917) 243 Fed. 348, 156 C. C. A. 128, on petition to the Circuit Court of Appeals by the said Oil Company, it appears that the company was a defendant in seventeen certain suits brought by the United States in one federal District Court as part of a unitary scheme or plan of litigation against various oil companies in California to recover possession of certain oil and gas lands and damages for minerals extracted therefrom, that an important question to be determined in each of such suits would be the rule of damages to be applied, that in so far as the decision of such question was concerned each of said causes was practically identical; that the judge of the District Court had owned stock in one of the defendant oil companies and was subject on that account to a stockholders' liability under the state law; that the foregoing facts were suggested by the petitioner to the judge as a disqualification under Judicial Code, § 20, and that he had denied the application for his disqualification. The Circuit Court of Appeals held that the judge was concerned in interest in the result of the suits, by reason of his stockholders' liability, and granted a mandamus directing him to enter an order that an authenticated copy of his disqualification be certified to the senior judge of the circuit.

The phrase "has been of counsel" has reference to the suit under consideration. *Duncan v. Atlantic Coast Line R. Co.*, (S. D. Ga. 1915) 223 Fed. 446.

1912 Supp., p. 137, Jud. Code, sec. 21.

The statute was not intended to paralyze the action of a judge who has heard the case, or a question in it, by the interposition of a motion to disqualify him between a hearing and a determination of the matter heard. *Ex p. American Steel Barrel Co.*, (1913) 230 U. S. 35, 33 S. Ct. 1007, 57 U. S. (L. ed.) 1379. This construction of the statute was followed in *In re Equitable Trust Co.*, (C. C. A. 9th Cir. 1916) 232 Fed. 836, 147 C. C. A. 30, where the complainant in a foreclosure suit filed an affidavit, under the statute, when, on complainant's motion, the judge was proceeding to fix an upset price for the foreclosure sale, and it was held that "the action of the trial judge thus set in motion and continuously prosecuted before him by the petitioner

[complainant] cannot, we think, be thus paralyzed."

1912 Supp., p. 139, Jud. Code, sec. 24.

See notes under vol. IV, p. 265, § 1, *supra*, p. 1251.

1912 Supp., p. 139, Jud. Code, sec. 24, par. First.

See notes under vol. IV, p. 265, § 1, *supra*, p. 1251.

1912 Supp., p. 139, Jud. Code, sec. 24, par. Third.

See notes under vol. IV, p. 220, sec. 563, par. eighth, *supra*, p. 1249.

1912 Supp., p. 139, Jud. Code, sec. 24, par. Eighth.

Action by railway carrier against consignee to recover certain charges.—Jurisdiction under this paragraph extends to a suit by a railway carrier against a commission merchant, the consignee of interstate shipments of live stock, to recover the charges for disinfecting the cars, claimed to be due under a tariff duly filed, published, and approved as required by the Interstate Commerce Act, although such consignee, admitting the legality of the charges, defends upon the ground that the carrier, having led him to believe that the amount demanded of and paid by him before he remitted to his principals the entire net proceeds of the sales of such live stock constituted full settlement, is estopped to demand more. *Louisville, etc., R. Co. v. Rice*, (1918) 247 U. S. 201, 38 S. Ct. 429, 62 U. S. (L. ed.) —, where the court said: "The Interstate Commerce Act requires carrier to collect and consignee to pay all lawful charges duly prescribed by the tariff in respect of every shipment. Their duty and obligation grow out of and depend upon that act."

1912 Supp., p. 140, Jud. Code, sec. 24, par. Sixteenth.

Suit by receiver in winding up.—Where there is no diversity of citizenship, and the ground of action is for a breach of duties as directors, at common law and in equity, federal jurisdiction depends upon the fact that the proceeding is brought by a receiver of a national bank in the course of winding up its affairs and is sanctioned by this paragraph. *Bates v. Dresser*, (D. C. Mass. 1915) 229 Fed. 772.

1912 Supp., p. 140, Jud. Code, sec. 24, par. Twentieth.

Process — Limitation.—This section prescribes no system of process to be followed

by the District Courts and those courts may follow their established practice, or adopt that established for the guidance of the Court of Claims. Following the practice of the District Court, an action against the United States may be instituted by service of a writ of summons upon the district attorney, and the impetration of the writ, not the filing of a statement of claim, tolls the statutory period of limitation, and for all the purposes of procedure the United States is to be regarded the same as any other defendant. *Mill Creek, etc., R. Co. v. U. S.*, (E. D. Pa. 1917) 246 Fed. 1013.

United States not real defendants.—Where a contractor agreed with the United States to furnish certain machinery, etc., for a public work and made an agreement with a subcontractor whereby the latter agreed with the contractor to furnish said machinery, and the government, on completion of the work, withheld from the final payment to the contractor a certain sum on account of asserted dereliction of the subcontractor, and the contractor in like manner withheld said sum from the subcontractor, and the contractor and a surety company for the use and benefit of all persons furnishing labor, etc., joined in a suit against the United States and the subcontractor alleging that the latter refused to recognize the right of the government to withhold said sum and was threatening to sue the contractor, and that said subcontractor had a valid claim against the contractor the latter had by equity the same lawful claim against the United States, and that in order to do justice to all parties an accounting should be had between the plaintiff contractor, the defendant subcontractor and the United States, praying that the court adjudicate between the respective parties as the right should appear, but without praying for judgment against the United States directly in the proceeding—it was held that the suit was primarily between the contractor and the subcontractor, and as they were citizens and residents of the state in which the suit was brought, the federal court had no jurisdiction. *National Surety Co. v. Washington Iron Works*, (W. D. Wash. 1917) 243 Fed. 260.

1912 Supp., p. 144, Jud. Code, sec. 28.

Within original "jurisdiction by this title."—"This title" in the above clause includes the entire Judicial Code, . . . but the essential reference is to section 24." *Ivanoff v. Mechanical Rubber Co.*, (N. D. Ohio 1916) 232 Fed. 173.

Removal of cases arising under Employers' Liability Act—Diversity of citizenship.—In respect of the last proviso

in Judicial Code, § 28, which proviso is a re-enactment of a provision in the Act of April 5, 1910, ch. 143, § 1, in title RAILROADS, 1912 Supp., p. 335, the Supreme Court said: "The language of both amendment and Judicial Code, we think, clearly inhibits removal of a cause arising under the act from a state court upon the sole ground of diversity of citizenship." *Kansas City, etc., R. Co. v. Leslie*, (1915) 238 U. S. 599, 35 S. Ct. 844, 59 U. S. (L. ed.) 1478, *affirming* (1914) 112 Ark. 305, 167 S. W. 83, Ann. Cas. 1915B 834. To the same point see *Southern R. Co. v. Pickett*, (1917) 244 U. S. 571, 37 S. Ct. 703, 61 U. S. (L. ed.) 1321, Ann. Cas. 1918B 69; *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003; *St. Joseph, etc., R. Co. v. Moore*, (1917) 243 U. S. 311, 37 S. Ct. 278, U. S. Adv. Ops. 1916, p. 278, *affirming* (1916) 268 Mo. 31, 186 S. W. 1035; *Lusk v. Osborne*, (1917) 191 S. W. 944.

Where the plaintiff's complaint shows a case arising under the federal Employers' Liability Act, the action cannot be removed, either on the ground of diverse citizenship of the parties, or as a case arising under a law of the United States. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) —.

Defendant a federal corporation.—A defendant cannot remove the case on the ground that it is a federal corporation. *Texas, etc., R. Co. v. Rasmussen*, (Tex. Civ. App. 1915) 181 S. W. 212; *Texas, etc., R. Co. v. Sherer*, (Tex. Civ. App. 1916) 183 S. W. 404, *following* *Kansas City Southern R. Co. v. Leslie*, (1915) 238 U. S. 599, 35 S. Ct. 844, 59 U. S. (L. ed.) 1478; *Texas, etc., R. Co. v. Hanson*, (Tex. Civ. App. 1916) 189 S. W. 289. And see now Act of Jan. 28, 1915, ch. 22, § 5, 1916 Supp. at p. 137.

Alleged fraudulent joinder of a local defendant does not give a nonresident defendant sued under the federal Employers' Liability Act a right of removal. *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

Traversal in petition for removal.—Where a nonresident defendant is sued under the federal Employers' Liability Act a right to have the cause removed does not arise from an allegation in said defendant's petition for removal that the injury did not happen in interstate commerce. *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

False and fraudulent averments.—An action based upon the federal Employers' Liability Act is not removable upon an

allegation in a petition for removal that the plaintiff's averments as to the interstate nature of his employment were false, and known by him to be false, and made for the sole purpose of fraudulently preventing a removal. *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653. But see the reservation in the opinion of the court in *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.)

Nonremovable united with removable cause of action.—Where a plaintiff elected to state alternative causes of action, one based upon an injury said to be covered by the federal Employers' Liability Act, and therefore not removable, and another not based thereon and which was removable, the defendant may remove the entire case. *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788.

Evidence in federal court.—Where the servant of a railroad company brought an action against it in a South Carolina court to recover damages for personal injuries, neither the complaint nor the answer tending to show that the action fell under the federal employers' liability statute, and the case was removed to the federal court on the ground of diverse citizenship, it was reversible error for the federal court to reject evidence offered by the defendant that the plaintiff was engaged in interstate commerce, and that therefore the defendant's liability was to be determined under the federal statute. *Atlantic Coast Line R. Co. v. Woods*, (C. C. A. 4th Cir. 1916) 238 Fed. 917, 151 C. C. A. 651.

An action solely against the Pullman Company for death of plaintiff's decedent in its employment would be removable, if there was the necessary diversity of citizenship, and so would an action brought against a nonresident railroad company and the Pullman Company where the plaintiff alleged employment solely by the Pullman Company. But where plaintiff alleged employment of his decedent by the railroad company and death caused by the concurrent negligence of both defendants, and the latter removed the cause upon a petition alleging that the employment was solely by the Pullman Company, and the plaintiff moved to remand, the court made an order requiring both plaintiff and defendants to file affidavits and counter affidavits as to the fact of employment, with the privilege of cross examination by the plaintiff, in open court, upon notice, of the persons making affidavits for defendants. *Martin v. New York, etc., R. Co.*, (S. D. N. Y. 1917) 241 Fed. 696.

For cases under other parts of this section 28 see notes to vol. IV, pp. 265, 312, 349, *supra*, p. 1251 *et seq.*

1912 Supp., p. 145, Jud. Code, sec. 29.

"Duly verified."—"Previous to the enactment of the Judicial Code on March 3, 1911, there was no requirement that petitions for removal should be verified." *Berry v. Mobile, etc., R. Co.*, (W. D. Ky. 1915) 228 Fed. 395.

Sufficiency.—In *Berry v. Mobile, etc., R. Co.*, (W. D. Ky. 1915) 228 Fed. 395, the action was brought against the railroad company and Estes, and each of the defendants filed a separate petition for removal on the ground of diverse citizenship. Each petition was verified by the attorney for the petitioner, who happened to be the same person in each instance. Judge Evans said: "Previous to the enactment of the Judicial Code on March 3, 1911, there was no requirement that petitions for removal should be verified, but Congress evidently thought, and so legislated, that such petition should be supported by oath. It, however, did not fix any standard by which we could determine what should be 'due' verification."

Bond.—In *State Improvement-Development Co. v. Leininger*, (N. D. Cal. 1914) 226 Fed. 884, the court, denying a motion to remand, said: "The formal defect in the condition of the bond providing that defendant enter a copy of the record in this court 'on or before the first day of the next regular session,' the old form, instead of 'within thirty days from the date of the filing of said petition,' as now required, did not render the bond void. It was a technical defect merely which could have been cured upon objection. No such objection having been made, and the record now being here, the bond has subserved its purpose and is functionless, and the defect is wholly immaterial."

"A notice of intention to file a petition and bond for removal of a cause is sufficient though it does not specify the time and place when it is to be presented. *Potter v. General Baking Co.*, 213 Fed. 697." *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621.

Delay in filing transcript.—In *Nelson v. Black Diamond Min. Co.*, (N. D. Ky. 1916) 237 Fed. 264, a case against two defendants had been ipso facto removed by the nonresident defendant by the filing of a sufficient petition and bond, on the alleged ground of a fraudulent joinder of defendants. The state court refused to order a removal, and proceeded to trial and judgment in favor of both defendants, which was reversed by the state appellate court as to the removing defendant and affirmed as to the other. When the case came back to the trial court, a transcript of the record was for the first time filed in the federal court.

The plaintiff's motion to remand was denied by the federal court.

In *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, Reed, J., said: "Under the Removal Act the Cedar Valley Company [petitioner for removal] was required to file a copy of the record in the federal court within 30 days after filing a sufficient petition and bond in the state court for the removal of the cause. If such petition was filed on January 17th, and the cause was a removable one, then defendant was required to file a copy of the record in this court by February 18th, unless for excusable delay; but it was not filed until May 25, 1916, more than three months after it was required by the act of Congress to be filed, and is therefore too late, no excuse for the delay being shown. If the cause is a removable one, the filing of a sufficient petition and bond for its removal in the state court operates to remove the cause at once to the proper federal court, and there is no occasion to wait until the state court has acted on the petition. *Kern v. Huidekoper*, (1881) 103 U. S. 485, 490, 26 U. S. (L. ed.) 354; *Baltimore, etc., R. Co. v. Koontz*, (1881) 104 U. S. 5, 26 U. S. (L. ed.) 643. The plaintiff has not moved to remand the cause upon the ground above considered; but the court may and should remand the cause upon its own motion, if the case, though a removable one, is not properly removed."

1912 Supp., p. 151, Jud. Code, sec. 41.

See notes under vol. II, p. 345, R. S. sec. 730, in title *CRIMES AND OFFENSES*, ante, p. 1188.

1912 Supp., p. 151, Jud. Code, sec. 42.

See notes to vol. II, p. 347, R. S. sec. 731, in title *CRIMES AND OFFENSES*, *supra*, p. 1188.

1912 Supp., p. 152, Jud. Code, sec. 43.

Venue of an action by an informer to recover a penalty given by a federal statute is governed by this section and not by Judicial Code, § 51. *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

1912 Supp., p. 153, Jud. Code, sec. 48.

See notes under vol. V, p. 566 [Act March 3, 1897, ch. 395], in title *PATENTS*, post, p. 1352.

1912 Supp., p. 153, Jud. Code, sec. 50.

See notes to vol. IV, p. 552, R. S. sec. 737, *supra*, p. 1306.

1912 Supp., p. 153, Jud. Code, sec. 51.

Place of bringing suit.—See notes to vol. IV, p. 265, § 1, *supra*, p. 1251.

1912 Supp., p. 153, Jud. Code, sec. 52.

See notes to vol. IV, p. 554, R. S. sec. 740, *supra*, p. 1306.

1912 Supp., p. 154, Jud. Code, sec. 53.

Finding indictment in division other than place of offense.—Prior to the enactment of this provision an indictment could be found in a division in a state other than that in which the offense was committed, where it was both more convenient to the government and the witnesses and in no way unfair to the accused. *U. S. v. Chennault*, (E. D. La. 1916) 230 Fed. 942.

1912 Supp., p. 155, Jud. Code, sec. 56.

Proceeding for disapproval of appointment.—In *In re Brown*, (C. C. A. 1st Cir. 1917) 242 Fed. 452, 155 C. C. A. 228, an original proceeding was addressed to a circuit judge for the First Circuit, asking under Judicial Code, § 56, that he disapprove of an order of the District Court of Massachusetts appointing a temporary receiver of the Boston & Maine railroad, upon the ground that the District Court was induced to make the appointment by alleged misrepresentations in respect to the financial condition of the railroad, as well as by omissions of material statements in respect to its financial condition. After certain preliminary proceedings it was ordered by the judge that the application be filed in the Circuit Court of Appeals for the First Circuit, that a hearing thereon be had by such court. The petition for disapproval was dismissed, the court, per Aldrich, J., saying: "We think section 56 was intended merely to confer upon a circuit judge, or upon Circuit Courts of Appeals, authority to disapprove of the automatic phase, so to speak, of section 56, which makes the order operate outside the district, and that if it should be found the receiver appointed in one district, where the property lies in different states in the same judicial circuit, should not control the property in districts or states outside of the district in

which he was appointed, a circuit judge or the Circuit Court of Appeals might declare against it. Section 129 of the Judicial Code provides for an appeal to the Circuit Court of Appeals from any decree appointing a receiver. Thus it is open, in that way, to any proper party who is aggrieved by the appointment of a receiver to raise the question as to the propriety or legality of the appointment. . . . It is plain that Congress intended that the substantive question whether there should be a receivership should be reviewed upon appeal, if reviewed at all, by the Circuit Court of Appeals, and not by a single circuit judge. . . . There might be business relations which would justify disapproval of outside jurisdiction and control by the original receiver, or personal, prudential, and perhaps other reasons, not going to the merits of the question whether there should be a receivership, why the same receiver should not act in all the outside districts, and reasons which might become the ground, not for inquiring into the legality of the original receivership decree, but grounds for disapproval of its outside operativeness." Brown, J., concurred for the further reason that the 30 days within which an order of disapproval might have been made had elapsed; and for the same reason Bingham, J., concurred in the result.

1912 Supp., p. 155, Jud. Code, sec. 57.

See notes to vol. IV, p. 380, § 8, *supra*, p. 1279.

1912 Supp., p. 159, Jud. Code, sec. 66.

See notes to vol. IV, p. 387, § 3, *supra*, p. 1281.

1912 Supp., p. 164, Jud. Code, sec. 76.

Purpose of section.—The provision of section 76 which requires the District Court to be open at all times for the purpose of hearing and deciding admiralty causes traces its origin to the Act of Feb. 23, 1847, ch. 20, 9 Stat. L. 131, which established the southern district of Florida, evidently for the especial purpose of disposing of admiralty business. It covers the hearing and deciding of admiralty causes, while the provision now found in section 9 of the Judicial Code, 1912 Supp., p. 134, relates to interlocutory proceedings "preparatory to the hearing." The provisions referred to are designed to render the District Courts readily accessible to applicants for justice in all branches of the jurisdiction; and while they required those courts to

be always open only as courts of admiralty and as courts of equity, they permit "special terms" to be held at any time for the transaction of any kind of business. The provisions indicate a policy of avoiding the hardships consequent upon a closing of the court during vacations. *Abbott v. Brown*, (1916) 241 U. S. 606, 36 S. Ct. 689, 60 U. S. (L. ed.) 1199.

1912 Supp., p. 195, Jud. Code, sec. 128.

See note to vol. IV, p. 409, § 6, *supra*, this title, p. 1285.

1912 Supp., p. 195, Jud. Code, sec. 129.

See notes to 1909 Supp., p. 291 [Act of April 14, 196, ch. 1627], *supra*, p. 1311.

1912 Supp., p. 200, Jud. Code, sec. 145, par. First.

A claim for damages for injuries to mules, which were let to the government under an unauthorized agreement by government agents to exercise extra care of the animals, and injured by the negligence of government employees, was not recoverable under this section. *Occidental Constr. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 817, 158 C. C. A. 157.

1912 Supp., p. 205, Jud. Code, sec. 162.

Only the claims of owners can be adjudged under this section, as the language, "claims of those whose property was taken" can have no other meaning. Hence where the owner of cotton sold it to the confederate states and received in payment bonds of the confederate states government, but remained in possession of the cotton until it was seized by United States treasury agents, his administrator had no valid claim for the proceeds. *Thompson v. U. S.*, (1918) 246 U. S. 547, 38 S. Ct. 349, 62 U. S. (L. ed.) —.

Property not "taken."—Where the owner of certain cotton in the state of Louisiana, on June 6, 1865, at which time it was taken into possession of the purchasing agents of the United States, who refused to release it until the owners paid one-fourth of the market value thereof, paid said amount under protest, and the same was covered into the treasury, the money became the absolute property of the United States and was not recoverable, as it was not "taken" within the meaning of the statute. *O'Pry v. U. S.*, (1916) 51 Ct. Cl. 111.

Suits should not be in the names of heirs of the original owner, but when

not in his name, should be in the name of his executor, administrator or other legal representative. *Basch v. U. S.*, (1917) 52 Ct. Cl. 134.

Averment and proof of loyalty is not required as to claimants coming within the intent and purpose of the general amnesty, issued Dec. 25, 1886. *Basch v. U. S.*, (1917) 52 Ct. Cl. 134.

1912 Supp., p. 218, Jud. Code, sec. 207.

The District Court was without jurisdiction to enjoin the enforcement of an order of the Interstate Commerce Commission refusing, on the ground of real or possible competition, to grant an extension of time for compliance with the provision of the Panama Canal Act of Aug. 24, 1912, ch. 390, § 11, in *RIVERS, HARBORS, AND CANALS*, 1914 Supp., p. 378, which prohibited, after July 1, 1914, any ownership by a railroad in any common carrier by water when the railroad might compete for traffic with the water carrier, and empowered the commission to determine questions of fact as to such competition, and to extend the time if the extension would not exclude or reduce competition on the water route, since the order of the Commission was negative in substance as well as form, and the risk to which the railway company was left subject did not come from the order, but from the statute. *Lehigh Valley R. Co. v. U. S.*, (1917) 243 U. S. 412, 37 S. Ct. 397, 61 U. S. (L. ed.) 819.

An order of the Interstate Commerce Commission fixing a hearing of certain complaints made by certain coal companies for damages for alleged failure to furnish cars upon demand, had no characteristic of an "order" within the meaning of the statute, affirmative or negative; and the federal District Court, as successor to the Commerce Court, had no jurisdiction to cancel such order and enjoin the Commission from further proceeding with the hearing of the complaint. *U. S. v. Illinois Cent. R. Co.*, (1917) 244 U. S. 82, 37 S. Ct. 584, 61 U. S. (L. ed.) 1007.

Jurisdiction of state court.—"A state court would obviously have no jurisdiction" of a suit to enjoin, etc., an order of the Interstate Commerce Commission, in whole or in part, said the court in *American Express Co. v. South Dakota*, (1917) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1352. But it was there held that the state Supreme Court had jurisdiction to enjoin express companies from advancing intrastate rates in non-competitive territory which the companies attempted to justify by an order of the Interstate Commerce Commission directing them to remove an existing discrimination against interstate commerce by

ceasing to charge higher rates between Sioux City, Iowa, and South Dakota points than for substantially equal distances between such South Dakota points and five named South Dakota cities; and the decree of the state court was modified by dissolving the injunction so far as it extended to rates in the competitive territory.

Considering the provisions of the Commerce Court Act in their entirety, the court in *M'Lean Lumber Co. v. U. S.*, (E. D. Tenn. 1916) 237 Fed. 460, was of the opinion that it was intended that any person who had acquired a standing as a party in interest in proceedings before the Interstate Commerce Commission, should have the right to appear as a party in any suit brought in the court involving the validity of an order therein made by the Commission, as distinguished from the mere right of intervention given to other persons who were not parties in interest before the Commission, but merely "interested in the controversy or question," and that the right thus given to a party in interest before the Commission is not limited to his appearance as an intervener in such proceedings as may be instituted by other parties in interest before the Commission but includes the right to appear in the court as a party plaintiff in proceedings which he himself may bring to test the validity of the order of the Commission. And it was accordingly held that where a petition was filed against the United States to set aside certain orders made by the Interstate Commerce Commission, the petitioners, having duly appeared before the Commission as complainants against the rates proposed to be established under a new schedule filed by the railway company, not only became parties in interest before the Commission in the proceedings had upon such complaint, but that as parties in interest in such proceedings they are now entitled as of right to appear as parties plaintiff under their petition in the District Court in proceedings to set aside the order of the Commission.

1912 Supp., p. 221, Jud. Code, sec. 208.

A state court has jurisdiction of an action by the state to compel corporations chartered by it to obey the orders, classifications, and regulations of the state railroad commission, none of which have been declared void by any court, and to restrain the defendants from charging other than said commission rates or applying other than the said commission's classification, as such suit is not to set aside, enjoin, suspend, or annul any order made by the Interstate Commerce Commission. *Abilene, etc., R. Co. v. State*, (Tex. Civ. App. 1918) 199 S. W. 878.

1912 Supp., p. 229, Jud. Code, sec. 233.

See notes to volume IV, p. 436, R. S. sec. 687, *supra*, p. 1289.

1912 Supp., p. 230, Jud. Code, sec. 237.

See cases under volume IV, p. 467, R. S. sec. 709, *supra*, p. 1290; and see notes to Act of Sept. 6, 1916, ch. 448, § 2, *ante*, this volume, title JUDICIARY, at p. 412.

1912 Supp., p. 231, Jud. Code, sec. 239.

This section enlarged the power of a Circuit Court of Appeals by conferring authority to certify questions in "any case within its appellate jurisdiction," section 6 of the Circuit Court of Appeals Act of 1891, vol. 4, p. 409, having been confined by construction to cases in which the judgments or decrees of the Circuit Courts of Appeals were final. So stated in *U. S. v. Lane*, (1917) 245 U. S. 186, 38 S. Ct. 94, 62 U. S. (L. ed.) —.

1912 Supp., p. 232, Jud. Code, sec. 240.

See notes to volume IV, p. 409, § 6, *supra*, p. 1285.

1912 Supp., p. 232, Jud. Code, sec. 241.

See notes to volume IV, p. 409, § 6, *supra*, p. 1285.

1912 Supp., p. 233, Jud. Code, sec. 246.

See *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113, as cited in notes to 1916 Supp., p. 136, amending Judicial Code, § 246, *infra*, p. 1324.

1912 Supp., p. 234, Jud. Code, sec. 248.

See notes to vol. V, p. 722, § 10, in title PHILIPPINE ISLANDS, *post*, p. 385.

Mode of review.—Appeal, not writ of error, is the proper method of reviewing a decree of the Philippine Supreme Court in a suit in which the complaint set forth a cause of action at law upon a contract, and the answer was in effect a bill in equity for reformation and incidentally to enjoin the action at law, since the proceeding thus became an equitable one. *Philippine Sugar Estates Development Co. v. Philippine Islands*, (1918) 247 U. S. 385, 38 S. Ct. 513, 62 U. S. (L. ed.) —.

See Act of Sept. 6, 1916, ch. 448, §§ 5 and 6, *ante*, this volume, p. 422.

Final judgment on reversal.—The federal Supreme Court, having determined, on appeal from the Philippine Supreme Court, that the court erred in refusing to consider evidence of mutual mistake offered under appropriate pleadings with a view to reforming the instrument in suit, will finally dispose of the case, where all the proffered evidence was admitted by the trial court and is in the record, and due exception was saved to the refusal of the trial court to grant a new trial on the ground that the evidence did not justify the findings. *Philippine Sugar Estates Development Co. v. Philippine Islands*, (1918) 247 U. S. 385, 38 S. Ct. 513, 62 U. S. (L. ed.) —.

1912 Supp., p. 235, Jud. Code, sec. 250.

Final judgment or decree subject to review.—Under this section a judgment of the Court of Appeals of the District of Columbia which affirmed a judgment of the Supreme Court of the District, quashing a writ of certiorari directed to the judge of the district police court to bring up for review the record and proceedings before trial in a criminal prosecution, and remanding the record to the Police Court, was not final for the purpose of review by the federal Supreme Court. *Hartranft v. Mullett*, (1918) 247 U. S. 295, 37 S. Ct. 518, 62 U. S. (L. ed.) —, dismissing a writ of error for want of jurisdiction.

First clause.—*Jurisdiction of trial court in issue.*—*Dodge v. Osborn*, (1916) 240 U. S. 118, 36 S. Ct. 275, 60 U. S. (L. ed.) 557, affirming a decree of the Supreme Court of the district, dismissing for want of jurisdiction a bill in a suit against the Commissioner of Internal Revenue to enjoin the assessment and collection of income taxes.

Sixth clause.—The Supreme Court has jurisdiction to review a judgment of the Court of Appeals of the District of Columbia in an action on the federal Employers' Liability Act where the defendant contended that it was not a "common carrier by railroad" within the meaning of that Act. *Washington Ry., etc., Co. v. Scala*, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360.

Any law of the United States.—In a proceeding for mandamus to restore the relator to office, where the defendant's return, referring to the Act of Congress governing the Civil Service (Act of Aug. 24, 1912, ch. 389, § 6, 37 Stat. L. 555), especially challenged the assertion that the relator was within the provisions of that law inhibiting removal without charges and hearing and asserted that the right to appoint and remove from the office in question was excepted out of such provisions. A demurrer to the

return as stating no defense was overruled and from the judgment dismissing the proceeding the case was taken to the Court of Appeals of the District. It was held to be a case where the judgment of the Court of Appeals would not be final. *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) —.

Criminal cases.—Certiorari issued out of the Supreme Court of the District of Columbia to the judge of the Police Court of the District, to bring for review the record and proceedings before trial in a criminal prosecution, is not a new or independent cause, but is a mere step in the pending criminal case, and a judgment of the Court of Appeals of the District which affirmed a judgment of the district Supreme Court, quashing the writ, was held to have been rendered in a case arising under the criminal laws and therefore excluded from the appellate jurisdiction of the federal Supreme Court, even though a jurisdictional question or a question concerning the construction of a federal statute was involved. *Hartman v. Mulloony*, (1918) 247 U. S. 295, 37 S. Ct. 518, 62 U. S. (L. ed.) —.

1912 Supp., p. 236, Jud. Code, sec. 251.

See also notes to vol. IV, p. 466 [Act of March 3, 1897, ch. 390], *supra*, p. 1290.

Certified questions.—Authority to certify questions is confined to cases where the judgments or decrees of the court are made final under Judicial Code, § 250. *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) —.

1912 Supp., p. 238, Jud. Code, sec. 256, par. Third.

See cases under vol. IV, p. 220, R. S. 563, par. Eighth, *supra*, p. 1249.

1912 Supp., p. 238, Jud. Code, sec. 256, par. Fifth.

See notes under vol. IV, p. 494, R. S. sec. 711, par. Fifth, *supra*, p. 1297.

1912 Supp., p. 241, Jud. Code, sec. 262.

See notes under vol. IV, p. 498, R. S. sec. 716, *supra*, p. 1297.

1912 Supp., p. 242, Jud. Code, sec. 265.

See notes to vol. IV, p. 509, R. S. sec. 720, *supra*, p. 1298.

1912 Supp., p. 242, Jud. Code, sec. 266.

The phrase "unconstitutionality of such statute" refers to the Federal Constitu-

tion and does not include unconstitutionality as regards the state constitution. *Cook v. Burnquist*, (D. C. Minn. 1917) 242 Fed. 321.

The court thus convened for the purpose of determining the right to a temporary injunction has no concern with and will not attempt to determine whether a state enactment is violative of the state constitution. *Jackson v. Cravens*, (S. D. Fla. 1916) 235 Fed. 212.

Jurisdiction of the District Court was sustained under this section in an action against state officers to enjoin enforcement of a statute violating the Federal Constitution in the imposition of permit and franchise taxes on a foreign corporation. *Looney v. Crane Co.*, (1917) 245 U. S. 178, 38 S. Ct. 85, 62 U. S. (L. ed.) —.

"If the threatened acts of the defendants are in excess of the authority vested in them by law, an action to enjoin them is within the jurisdiction of a federal court, both diverse citizenship and the necessary jurisdictional amount being present." *Hebe Co. v. Calvert*, (S. D. Ohio 1917) 246 Fed. 711.

Three judges necessary.—In *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238, dismissing an appeal from an order denying an interlocutory injunction, the court said: "The question presented to the court below was whether the commissioner of agriculture of the state of New York should be restrained from carrying out and enforcing a threatened course of action having for its object the prevention of sales within the state of mapleine after its importation into New York from the state of Washington; mapleine being a food product manufactured and sold in the latter state and extensively transported in interstate commerce. Stated in another way, the question was whether the New York Agricultural Law (ch. 494, Laws of 1914), entitled 'An act to amend the Agricultural Law, in relation to adulterated or misbranded food,' is unconstitutional, as being in conflict with the provisions of section 8 of article 1 of the Constitution of the United States, as constituting an undue interference with interstate commerce. The district judge held the New York law constitutional, as not being in conflict with federal law. From this decision an appeal has been taken. The case has been argued in this court, and we shall have to dispose of it upon a point not raised in argument. It appears that the district judge was without jurisdiction to hear and determine the application for the interlocutory injunction. A court of the United States composed of one judge only is without power to hear and determine such an application. . . . It was not within the power of a single justice or judge to pass

on the question whether the New York law violated the Constitution of the United States. When application for the injunction was presented to the district judge it was incumbent upon him to call to his assistance two other judges, one of whom should be a justice of the Supreme Court or a circuit judge, to hear and determine the application. And it was also his duty to give notice of the hearing to the governor and attorney-general, as well as to such other persons as may be defendants in the suit. This course was not pursued, but the district judge proceeded to hear and determine the question sitting alone."

The presence of three judges is necessary at a hearing on a bill to enjoin enforcement by state officers of provisions in a state statute on the ground of their conflict with the Federal Constitution. *Hebe Co. v. Calvert*, (S. D. Ohio 1917) 246 Fed. 711.

Appeal, in general.—A temporary injunction against a state officer which a federal District Court, having first acquired jurisdiction over the parties and subject matter of a suit, granted for the purpose of protecting and preserving that jurisdiction until the object of the suit should be accomplished and complete justice be done between the parties, is not an order from which an appeal may be taken to the federal Supreme Court under this section. *Looney v. Eastern Texas R. Co.*, (1918) 247 U. S. 214, 38 S. Ct. 460, 62 U. S. (L. ed.) —.

Appeal from an order of a single judge denying an interlocutory injunction in a case within this section is not authorized, and such appeal should be dismissed. *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238.

Appeal to the Circuit Court of Appeals in a case covered by this section and heard by three judges is excluded. The only appeal allowed is to the Supreme Court, and Judicial Code, § 129, does not apply. *Jackson v. Cravens*, (C. C. A. 5th Cir. 1916) 238 Fed. 117, 151 C. C. A. 193.

Although this section provides for an appeal direct to the Supreme Court, an appeal may be taken to the Circuit Court of Appeals where the jurisdiction of the District Court rests not alone upon the allegation that a law violates the Federal Constitution, but also upon the ground of diverse citizenship of the parties. *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238.

Jurisdiction to review the whole case was acquired by the Supreme Court on appeal from an order which, while enjoining the enforcement of fines and penalties prescribed by a state statute for failure to obey an order of a corporation commission regulating water rates, refused to interfere with the enforcement of such

order. *Van Dyke v. Geary*, (1917) 244 U. S. 39, 37 S. Ct. 483, 61 U. S. (L. ed.) 973.

Repeal of obnoxious state statute pending appeal.—In *Berry v. Davis*, (1917) 242 U. S. 468, 37 S. Ct. 208, 61 U. S. (L. ed.) 441, the Supreme Court reversed a decree and directed the bill to be dismissed without costs to either party, the court saying: "This is a bill to enjoin the state board of parole and the warden and physician of the state penitentiary at Fort Madison from performing vasectomy upon the plaintiff, the defendant in error, in pursuance of an Iowa statute approved April 19, 1913, 35 G. A. ch. 187, § 1. Supplement to Code 1913, ch. 19-B, § 2600-p. This act, among other things, directed the operation to be performed upon convicts in the penitentiary who had been twice convicted of felony, and on Feb. 14, 1914, the board had ordered it, upon the ground that the plaintiff had been twice so convicted. The bill was filed on March 11, 1914. On April 15, 1914, following an opinion of the attorney-general that both felonies must have been committed after the passage of the Act, the order was laid on the table, and the warden and physician made affidavits, filed on April 22, that the operation would not be performed by them. Nevertheless, three judges, disregarding the foregoing opinion and action, proceeded to issue a preliminary injunction as prayed in the bill. 216 Fed. 413. An appeal was taken to this court in 1914. In 1915 the Act of 1913 was repealed, and the substituted act does not apply to the plaintiff. Supplemental Supplement to the Code of Iowa, 1915, ch. 19-B, § 2600-sl. All possibility or threat of the operation had disappeared now, if not before, by the act of the state. Therefore, upon the precedents we are not called upon to consider the propriety of the action of the District Court, but the proper course is to reverse the decree and remand the cause, with directions that the bill be dismissed without costs to either party."

1912 Supp., p. 243, Jud. Code, sec. 267.

See notes to vol. IV, p. 530, R. S. sec. 723, *supra*, p. 1302.

1912 Supp., p. 243, Jud. Code, sec. 268.

See notes under vol. IV, p. 534, R. S. sec. 725, *supra*, p. 1303.

1912 Supp., p. 245, Jud. Code, sec. 275.

See notes to vol. IV, p. 737, R. S. sec. 800, in title *JURIES*, *post*, p. 1326.

1912 Supp., p. 245, Jud. Code, sec. 276.

See note to vol. IV, p. 749, § 2, in title JURIES, *post*, p. 1326.

1912 Supp., p. 245, Jud. Code, sec. 277.

Constitutionality.—Overruling a contention that a defendant was not lawfully convicted because the jurors were not drawn from the entire district but only from one division thereof, and therefore that he was not tried by a jury of the state and district in which the crime was committed in violation of the Sixth Amendment; the court said: "The proposition disregards the plain text of the 6th Amendment, the contemporary construction placed upon it by the Judiciary Act of 1789 (chap. 20, 1 Stat. at L. 73, 88, § 29), expressly authorizing the drawing of a jury from a part of the district, and the continuous legislative and judicial practice from the beginning. § 802, Rev. Stat. § 277, Judicial Code. *Agnew v. United States*, 165 U. S. 36, 43, 41 L. ed. 624, 627, 17 Sup. Ct. Rep. 235; *United States v. Wan Lee*, 44 Fed. 707; *United States v. Ayres*, 46 Fed. 651; *United States v. Peuschel*, 116 Fed. 642, 646; *Clement v. United States*, 79 C. C. A. 243, 149 Fed. 305; *Spencer v. United States*, 95 C. C. A. 60, 169 Fed. 562, 565, 566; *United States v. Merchants' & Miners' Transp. Co.*, 187 Fed. 355, 359, 362." *Ruthenberg v. U. S.*, (1918) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L. ed.) —.

1912 Supp., p. 247, Jud. Code, sec. 286.

Section 275, relating to qualifications and exemptions of jurors, is limited by the expression "subject to the provisions hereinafter contained." Section 286, therefore, must be read in connection with section 275, and as it deals specifically with the question of prior service, is exclusive of the provisions of the state statute on the same subject. *Papernow v. Standard Oil Co.*, (D. C. R. I. 1915) 228 Fed. 399.

1912 Supp., p. 248, Jud. Code, sec. 287.

See notes under vol. IV, p. 745, R. S. sec. 819 in title JURIES, *post*, p. 1326.

1912 Supp., p. 250, Jud. Code, sec. 294.

This section and the following Judicial Code, § 295, were quoted and applied in *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746, holding that in a suit against the United

States under Judicial Code, § 24, par. Twentieth, 1912 Supp., p. 138, where judgment is rendered in favor of the plaintiff costs may be awarded against the United States.

Judicial Code, § 129, should not receive a different construction from that which it had when originally enacted in the Circuit Court of Appeals Act of 1891. *Jackson v. Cravens*, (C. C. A. 5th Cir. 1916) 238 Fed. 117, 151 C. C. A. 193.

1912 Supp., p. 250, Jud. Code, sec. 295.

See *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746, as cited in note to Judicial Code, § 294, *supra*, this page.

1914 Supp., p. 226. [Act of March 4, 1913, ch. 160.]

See notes to 1912 Supp., p. 242, Jud. Code, § 266, *supra*, p. 1320.

1914 Supp., p. 229. [Act of Oct. 3, 1913, ch. 18.]

See notes to 1912 Supp. p. 218, Jud. Code, § 207, *supra*, p. 1318, and notes to 1912 Supp., p. 221, Jud. Code, § 208, *supra*, p. 1318.

1914 Supp., p. 230. [Act of Oct. 22, 1913, ch. 32.]

See also notes to 1912 Supp., p. 218, Jud. Code, § 207, *supra*, p. 1318.

Venue of suits.—A suit by carriers against state authorities of Illinois to prevent complete obedience by the carriers to an order of the Interstate Commerce Commission fixing interstate rates was not a suit to enforce an order of the commission, within the meaning of the statutory provision, and the venue of the suit was governed by Judicial Code, § 207, 1912 Supp., p. 218, which preserves and continues the general jurisdiction of the District Courts over cases and proceedings not therein enumerated. The suit was therefore properly brought in the federal District Court for the northern district of Illinois. *Illinois Cent. R. Co. v. Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) —.

Cross-bill.—But cross-bills in the suit described in the last preceding paragraph assailing the validity of the Interstate Commerce Commission's order on various grounds and concluding with a prayer that it be set aside and annulled and that the United States and the commission be enjoined from enforcing it and the carriers from complying with it, were not maintainable, as in subject matter and purpose they were suits to set aside the

order and could be brought only in the eastern district of Missouri, the order having been made upon the petition of a resident of that district. *Illinois Cent. R. Co. v. Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) —.

Procedure.—The inherent authority of a court of equity, in the exercise of a sound discretion, to accompany a decree changing the status quo, with an appropriate provision, nevertheless preserving the status quo pending an appeal, is not impaired or lessened by the Act abolishing the Commerce Court and transferring its jurisdiction to the District Courts of the United States. *Louisville, etc., R. Co. v. U. S.*, (M. D. Tenn. 1915) 227 Fed. 273.

Hearing by three judges — **Determination of merits.**—In *Louisville, etc., R. Co. v. U. S.*, (D. C. Tenn. 1915) 227 Fed. 258, the three judges denied a motion for an interlocutory injunction, and at the same time sustained the motions of the United States and of the commission to dismiss the petition; the latter "being a matter within the authority of the three judges now composing the court, under the provision of the Act of 1913, relating to the final hearing before three judges of any suit brought to suspend or set aside an order of the commission; the hearing of a motion to dismiss a petition for want of equity being, in our opinion, a final hearing within the meaning of such provision."

But in *Brown Drug Co. v. U. S.*, (D. C. Ia. 1916) 235 Fed. 603, it was decided by a majority of the three judges convened to hear the application for a temporary injunction that they had no power to hear and determine a motion to dismiss the petition upon its merits, and that such motion must be submitted to the district judge alone and be determined by him. Smith, J., said: "If the motion had been filed before the application had been made, there would be no pretense that these three judges should sit to hear that question."

Discretion of court.—The court will not grant a temporary injunction unless there is irreparable injury to the complainants, and unless it can be granted without imposing irreparable injury upon some one else. *Brown Drug Co. v. U. S.*, (D. C. Ia. 1916) 235 Fed. 603.

1916 Supp., p. 128. [*Act of Jan. 20, 1914, ch. 11.*]

Where no count in the plaintiff's pleading in an action in a state court claiming less than \$3,000 attempted to allege a primary liability of the defendant under the Interstate Commerce Act otherwise than as a carrier, the action could not be removed to the federal court. *Emery*

v. American Refrigerator Co., (1918) 246 U. S. 634, 38 S. Ct. 414, 62 U. S. (L. ed.) —.

1916 Supp., p. 132. [*Act of Aug. 22, 1914.*]

Writs of certiorari to the Court of Customs Appeals were granted in four memoranda cases: *Nicholas v. U. S.*, (1916) 242 U. S. 641, 37 S. Ct. 113, 61 U. S. (L. ed.) 541; *Shaw v. U. S.*, (1916) 242 U. S. 641, 37 S. Ct. 113, 61 U. S. (L. ed.) 541; *Vitelli v. U. S.*, (1916) 242 U. S. 641, 37 S. Ct. 113, 61 U. S. (L. ed.) 541; *Vitelli v. U. S.*, (1916) 242 U. S. 641, 37 S. Ct. 113, 61 U. S. (L. ed.) 541.

1916 Supp., p. 135, sec. 2. [*Act of Jan. 28, 1915, ch. 22, amending Judicial Code, §§ 128, 238.*]

Time of taking appeal, etc., from Porto Rico.—The statute attaching Porto Rico to the first circuit contained no provision in terms fixing the time for taking appeals to the Circuit Court of Appeals or suing out writs of error from that court for the cases from the Supreme Court of Porto Rico which might reach it. It was in fact a *casus omisus* which was supplied by a rule of court adopted by the Circuit Court of Appeals for the first circuit, Oct. 19, 1916, as "additional rule 37." It read as follows: "Appeals and writs of error from and to the District Court of the United States for the District of Porto Rico, and from the Supreme Court of the District of Porto Rico whenever by law they can be taken, shall be taken within six calendar months from the time when the right to such an appeal or writ of error accrues, and not afterwards, by filing a claim for the appeal in the registry of the court appealed from, or by suing out a writ of error from the Court of Appeals, or from the court or judge in Porto Rico, as the case may be." *Graham v. O'Ferral*, (C. C. A. 1st Cir. 1916) 236 Fed. 717, 150 C. C. A. 49.

An appeal, and not a writ of error was the proper appellate proceeding to review in the Circuit Court of Appeals a judgment of the Porto Rico Supreme Court reversing a judgment of dismissal by the District Court and rendering judgment in accordance with the prayers of the complaint enjoining the defendant railroad company from further operation of its railroad upon plaintiff's lands and ordering removal of the tracks therefrom. *Plazuela Sugar Co. v. Pastoriza*, (C. C. A. 1st Cir. 1917) 245 Fed. 115, 157 C. C. A. 411.

Further review by Supreme Court.—As to the effect of this section upon the

appellate jurisdiction of the United States Supreme Court to review final decisions of the Circuit Court of Appeals in cases taken to the latter court under this section, see *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113.

1916 Supp., p. 136, sec. 2. [*Act of Jan. 28, 1915, ch. 22, amending Judicial Code, § 246.*]

Review by federal Supreme Court.—In view of changes made by this amendment of Judicial Code, § 246, the federal Supreme Court has no jurisdiction to review on writ of error a judgment of the Circuit Court of Appeals for the ninth circuit affirming a judgment of the Supreme Court of Hawaii, rendered in a case where there was no federal question and no diversity of citizenship. *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113.

Where the instructions of the court are not in the record to a writ of error to the Supreme Court of Hawaii, and the appellate tribunal is, therefore, not informed as to their character, it must assume that the instructions were given with proper and sufficient statement of the law applicable thereto. *Inter-Island Steam Nav. Co. v. Ward*, (C. C. A. 9th Cir. 1916) 232 Fed. 809, 147 C. C. A. 3.

1916 Supp., p. 137, sec. 5. [*Act of Jan. 28, 1915, ch. 22.*]

A defendant is not entitled to remove a case from a state court to a federal court on the ground that it was incorporated under an Act of Congress. *Texas, etc., R. Co. v. Hanson*, (Tex. Civ. App. 1916) 189 S. W. 289.

1916 Supp., p. 137. [*Act of March 3, 1915, ch. 90, Jud. Code, § 274a.*]

Construction generally.—This section relates only to the power of the court in a case where a suit has been improperly brought, either on the equity or the law side of the court, and provides that the same be amended so as to have the pleadings conform to the proper practice. *Waldo v. Wilson*, (C. C. A. 4th Cir. 1916) 231 Fed. 654, 145 C. C. A. 540.

"The paramount idea carried in the act is that courts are established and maintained for the administration of justice, and not to furnish a forum chiefly for the exhibition of the skill of intellectual gladiators—sometimes forgetful of the rights of the parties litigant to have justice administered. So this act, just referred to, provides that if a party has

brought his suit at law, whereas it should have been in equity, or vice versa, the cause may, upon application, be transferred to the proper side of the docket, law or equity, as the case may be, the pleadings properly reformed, and the cause proceeded with. Thus the delay or injustice which the courts were compelled to cause in numerous instances, . . . and many other cases, can be avoided." *Webb v. Southern R. Co.*, (S. D. Ala. 1916) 235 Fed. 578.

Pre-existing actions begun before the passage of this section were affected by it. *National Surety Co. v. U. S.*, (C. C. A. 6th Cir. 1916) 228 Fed. 577, 143 C. C. A. 99, L. R. A. 1917A 336.

In the case of a suit instituted prior to the enactment of this section it was held that even if it authorized the transference of a cause from the law to the equity side of the court it could not be construed as relating back so as to defeat the jurisdiction of the state court if it had already been acquired. *Waldo v. Wilson*, (C. C. A. 4th Cir. 1916) 231 Fed. 654, 145 C. C. A. 540.

When transfer may be refused.—Where the question whether a suit should be on the law or equity side of the court is not important for the purpose of the decision, because the same result must be reached in either event, the cause will not be transferred from the side in which it is brought to the other side of the court. *Palmer v. Doull Miller Co.*, (S. D. N. Y. 1916) 233 Fed. 309.

So where a case has been tried at law and a judgment rendered, although a court of equity had full jurisdiction in the matter, and the only effect of holding that the true jurisdiction was in equity would be to send the case back to be transferred to the equity side and heard over again by the same judge upon probably the same proofs, the jurisdiction of the court below, on the law side, will be sustained. *National Surety Co. v. U. S.*, (C. C. A. 6th Cir. 1916) 228 Fed. 577, 143 C. C. A. 99, L. R. A. 1917A 336.

And this section cannot be applied so as to permit a bill filed later and based upon a comparatively trifling incident of the situation to oust the jurisdiction of the law court and prevent a trial by jury. The main controversy being legal in its nature, orderly administration requires that it should be tried out in a court of law, which has first taken hold of it. *Ingersoll Engineering, etc., Co. v. Crocker*, (C. C. A. 6th Cir. 1915) 228 Fed. 844, 143 C. C. A. 242.

Under Equity Rule 22 a suit brought on the equity side of the court, on the alleged ground of inadequate remedy at law, where the plaintiff's bill shows, however, that the suit is merely to recover a money judgment for breach of a simple contract, should be transferred to the law docket

on motion of the defendant; and a decree for the plaintiff was reversed with instructions so to transfer the case. *Edward Hines Lumber Co. v. Bowers*, (C. C. A. 5th Cir. 1917) 238 Fed. 782, 151 C. C. A. 632.

Where a case came up as an appeal in equity and it was contended that review should have been sought by writ of error it was held that this objection might be disregarded as merely formal and without substance. *Sola v. Cintron*, (C. C. A. 1st Cir. 1916) 237 Fed. 61, 150 C. C. A. 263. Section 4 of the Act of Sept. 6, 1916, mentioned in the foregoing case, is given *ante*, this volume, title JUDICIARY, p. 421.

1916 Supp., p. 138. [*Act of March 3, 1915, ch. 90; Jud. Code, § 274b.*]

Defense of fraudulent representations.—In an action of assumpsit to recover upon written memoranda by which the defendant ordered certain goods it is proper, under this section, for the defendant to rely, in his answer, upon fraudulent representations on the part of the plaintiff. *Burroughs Adding Mach Co. v. Scandinavian-American Bank*, (W. D. Wash. 1917) 239 Fed. 179.

A plaintiff in an action at law may have equitable relief on a replication to a defense set up in the defendant's answer; for example, where in an action for damages for personal injuries, the defendant pleads a release, the plaintiff may by replication set up fraud in obtaining the release and ask to have the release set aside. *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531.

Equitable issues to be tried separately.—In an action at law for damages for personal injuries, where the defendant pleaded a release, and the plaintiff filed a replication praying that the release be rescinded for fraud, it was reversible error for the court to submit to the jury with the issue at law the issue of fraud in obtaining the release for an advisory verdict on the latter issue, the verdict on the legal issue being made contingent on the result of the advisory verdict. The equitable issue should have been first tried by the court and not submitted to the same jury. *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531.

Review of judgment or decree.—In the case set forth in the last preceding paragraph, viz., *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531, where the court, pursuant to the advisory verdict of the jury, set aside the release for fraud and rendered judgment on the verdict of the jury for damages, and the defendant brought up the case by writ of error and by appeal the court said that it had not adopted

any rule as to how cases under Judicial Code, § 274b shall be reviewed, but in view of Act of Sept. 6, 1916, ch. 448, § 4, 39 Stat. L. 727, *ante*, this volume, p. 421, "it would seem to be immaterial whether the case was brought here by appeal or writ of error."

In the absence of a rule of court regulating the method of procedure, where there was a verdict and judgment for the defendant in an action at law the Circuit Court of Appeals refused to dismiss plaintiff's appeal on the ground urged that he had mistaken his remedy, and held it to be unimportant whether the matters set up in an affirmative defense constituted an equitable defense or were properly tried and disposed of at law. *Maine Northwestern Development Co. v. Northwestern Commercial Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 583, 153 C. C. A. 387.

1916 Supp., p. 138. [*Act of March 3, 1915, ch. 90; Jud. Code, § 274c.*]

Amendment of complaint.—Where it appeared that the alleged ground of jurisdiction in the court below was diversity of citizenship, and the plaintiff properly alleged the citizenship of the defendant in the complaint but neglected to allege his own citizenship, the court ruled that under this section the plaintiff would be permitted in the appellate court to file, within ten days, an amendment so as to show properly on the record diverse citizenship and jurisdiction *Swayne v. Barsch*, (C. C. A. 9th Cir. 1915) 226 Fed. 581, 141 C. C. A. 337.

1916 Supp., p. 279, sec. 18. [*Act of Oct. 15, 1914, ch. 323.*]

No security need be required upon granting an interlocutory injunction as a method of protecting the court's jurisdiction, orders, and titles from unlawful impairment, and where such injunction may be regarded as in lieu of proceedings for contempt of the court. *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448.

1916 Supp., p. 280, sec. 20. [*Act of Oct. 15, 1914, ch. 323.*]

This section does not prevent the granting of an injunction against the officers and members of a labor union restraining them from unlawfully causing, inducing, or in any way forwarding acts of violence violating the rights of a complainant as an interstate commerce and United States mail carrier, where such injunction in no way abridges any of the rights secured by this provision. *Alaska Steamship Co. v. International Longshoremen's Ass'n*, (W. D. Wash. 1916) 236 Fed. 964.

JURIES

Vol. IV, p. 737, sec. 800.

Where under a state statute a juror must be a qualified elector of good moral character, every elector will be presumed to be of good moral character, unless the want of it is manifested by conviction of a disqualifying crime or is made to appear by evidence dehors the record. *Christopoulou v. U. S.*, (C. C. A. 4th Cir. 1916) 230 Fed. 788, 145 C. C. A. 98.

Where a grand juror was duly qualified when summoned, a subsequent loss of the property qualification as a voter, from which class jurors are selected under state statute, would not disqualify him from completing the duties of a grand juror. Such property qualification as a voter must be regarded as affecting a person's eligibility for selection as a juror, and not as prescribing a measure of his continuing capacity to serve. *U. S. v. Gradwell*, (D. C. R. I. 1915) 227 Fed. 243.

A grand juror is not disqualified from acting because of his conviction of a statutory misdemeanor which is not enumerated as a disqualifying crime under the laws of the state. *Christopoulou v. U. S.*, (C. C. A. 4th Cir. 1916) 230 Fed. 788, 145 C. C. A. 98.

Service as a petit juror in the state court does not work as a disqualification to serve as a petit juror in the federal court. *Papernow v. Standard Oil Co.*, (C. C. R. I. 1915) 228 Fed. 399.

Vol. IV, p. 741, sec. 802.

Act constitutional.—Because the jurors were not drawn from the entire district but only from one division thereof did not invalidate a conviction. *Ruthenberg v. U. S.*, (1918) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L. ed.) 414.

Vol. IV, p. 744, sec. 811.

Until discharged by the court, a grand jury continues to exist until the end of the term, even though it does not continue in session. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1915) 227 Fed. 206.

And as long as the grand jury is in existence, it is unnecessary to order a new venire to issue to summon a new grand jury, under Judicial Code, § 284, 1912 Supp., p. 247. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1915) 227 Fed. 206.

Vol. IV, p. 744, sec. 812.

Judicial Code, § 275, in 1912 Supp., p. 245, relating to qualifications and exemptions of jurors, is limited by the expression "subject to the provisions hereinafter contained." Section 286, 1912 Supp., p. 247, therefore must be read in

connection with section 275, and as it deals specifically with the question of prior service, is exclusive of the provisions of the state statute on the same subject. *Papernow v. New York Standard Oil Co.*, (D. C. R. I. 1915) 228 Fed. 399.

Vol. IV, p. 745, sec. 819.

Persons jointly indicted.—In *Schwartzberg v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 348, 154 C. C. A. 228, fourteen defendants, who were jointly indicted and arraigned for a felony not treason or a capital offense, appeared by numerous counsel, who refused to unite or act jointly (presumably with the assent of their clients) in respect of choosing a jury. The trial judge announced that he would entertain one peremptory challenge for each defendant, or fourteen in all, with the result that every defendant had one challenge (if their apparent differences were pressed to their limit), but the "parties" defendant had collectively more challenges than the statute required. Thereupon some defendants peremptorily challenged more than once, and such efforts (not joined in by all) were disallowed. It was held that this proceeding gave no ground for complaint, as such defendants have always been regarded as one party, and especially has such been the practice in the second circuit for many years.

Vol. IV, p. 749, sec. 2.

Purpose of section.—The section makes it plain that Congress sought to eliminate political considerations, or at least minimize that consideration, for the commissioner is to be of the principal political party opposed to that to which the clerk belongs and "a well-known member" of that party. However, when it comes to the selection of names to place in the jury box, such names are to be placed therein by such officers alternately and "without reference to party affiliations"; that is, without reference to the political affiliations of the persons so selected for jury duty, if called upon to serve. *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

Selection of names.—The selection of names to go in the jury box is to be made by the commissioner of jurors and by the clerk of the court, and no other person or official has the right to participate in such selection. Others may, of course, answer proper inquiries properly made to them, or either of them, and give information to these officials as to the character and fitness of men, but may not select, and no person interested

should be permitted to suggest names. *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

"It was not contemplated that the clerk and commissioner of jurors should visit and abide in the several counties from which jurors are to be selected for a sufficient length of time to familiarize themselves or become acquainted with the citizens subject to jury duty and competent to act as jurors, but that it was anticipated these officers, in performing their duties, would obtain information from various legitimate sources, including, undoubtedly, personal inquiry." *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

"The restriction on the number of challenges allowed the defendants [Jud. Code, § 287, 1912 Supp., p. 248], especially where more than one defendant is on trial, emphasizes the idea that the names of jurors selected to be put in the box from which the panels of grand and petit jurors are to be drawn later for service at a term of court, and which panels are limited in number, should represent and call for men well qualified to serve who are fair and impartial, and who were

fairly and impartially selected by the officers charged with the performance of that duty. Mere irregularities, which cannot be prejudicial to either party, have been quite generally held not to sustain a challenge to the array." *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

The clerk and jury commissioner each has the right of selection of his names absolutely independent of the other. *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

Apportionment.—It is not required by law or by any rule of court, in selecting lists of names of jurors for service in the United States courts, that the names selected and placed in the box be apportioned to the several towns of a county or to the several wards of a city in proportion to the persons residing in such towns and wards, respectively, subject to jury duty. *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

Number of names.—The maximum number of names to go in the box is not limited by law or any rule of the court. *U. S. v. Murphy*, (N. D. N. Y. 1915) 224 Fed. 554.

KIDNAPPING

Vol. IV., p. 774, sec. 5526.

Peonage defined.—"In the case of *Clyatt v. U. S.*, [197 U. S. 207, 25 S. Ct. 429, 49 U. S. (L. ed.) 726] the supreme court affords us a clear definition of the term." *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607, holding that under the circumstances of the case, the defendant was not guilty of violating this section, and that a person cannot be deemed guilty of peonage

where he has held another in involuntary servitude for the purpose of having him comply with an agreement to work for a certain term.

"Returns . . . to a condition of peonage."—A defendant cannot be convicted of returning another to a condition of peonage where the latter had never been in that condition. *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607.

LARCENY (INCLUDING ROBBERY)

Vol. IV, p. 789, sec. 5356.

See notes to PENAL LAWS, 1909 Supp. p. 484, § 287, *post*, p. 1362.

Vol. IV, p. 790, sec. 5439.

Obtaining subsistence and transportation for enlistment.—In *U. S. v. Buchanan*, (N. D. Cal. 1917) 238 Fed. 877, the defendant was charged in the indictment with the offense of applying to his own use certain subsistence and supplies

furnished and to be used for military service, the facts alleged being that he had declared upon an application blank furnished him by a recruiting officer that he had never applied for enlistment before, and thereby obtained board and lodging, and transportation for the purpose of enlistment, but was rejected because he had been dishonorably discharged from the army, and well knew that he was not eligible for re-enlistment. A demurrer to the indictment was sustained.

Vol. IV, p. 790, sec. 1.

Whether stealing postage stamps is a stealing of "property" and indictable under this section, or, on the other hand, is indictable only under section 109, *PENAL LAWS*, 1909 Supp., p. 456, was expressly left undecided in *Morgan v. Sylvester*, (C. C. A. 8th Cir. 1916) 231 Fed. 886, 146 C. C. A. 82.

Cumulative sentences.—Where there was a conviction on both counts of an indictment charging in one count the burglarizing of a post office in violation of section 192, title *PENAL LAWS*, 1909 Supp., page 457, and in the other count the stealing certain property of the United States from and out of that

post office, at the time, in violation of the text section, the two counts charged separate offenses, which were punishable separately by a cumulative sentence on each count. *Morgan v. Sylvester*, (C. C. A. 8th Cir. 1916) 231 Fed. 886, 146 C. C. A. 82, quoting from *Morgan v. Devine*, (1915) 237 U. S. 632, 35 S. Ct. 712, 59 U. S. (L. ed.) 1153 and citing "to the same effect," *Ebeling v. Morgan*, (1915) 237 U. S. 625, 35 S. Ct. 710, 59 U. S. (L. ed.) 1151, where the court said: "The better doctrine recognizes that, although the transactions may be in a sense continuous, the offenses are separate, and each complete in itself."

LIGHTS AND BUOYS

Vol. IV, p. 835, sec. 4676.

Marking wreck at request of owner.—Where the owner of a wrecked vessel in the Hudson river requested the lighthouse department to buoy the wreck and paid the usual charge for so doing, he was held to have complied with the provisions of section 15 of the Act of March 3, 1899, ch. 425, 30 Stat. L. 1112 (title

RIVERS, HARBORS AND CANALS), requiring the owner of wrecked or sunken craft to immediately mark it with a buoy. And in so marking the wreck the lighthouse department acted not as the private agent of the owner, but in its sovereign capacity under this section, as agent for the whole public. *The Plymouth*, (C. C. A. 2d Cir. 1915) 225 Fed. 483, 140 C. C. A. 1.

LIMITATION OF VESSEL OWNER'S LIABILITY

Vol. IV, p. 837, sec. 4281.

Passenger's baggage.—The provisions of this section respecting the liability of vessels "as carriers" do not apply to articles carried by a passenger as baggage. *The Cretic*, (D. C. Mass. 1914) 224 Fed. 216.

Vol. IV, p. 839, sec. 4283.

In general.—The provision for limiting the liability of the shipowner to the value of the vessel and the freight then earned was intended to encourage the investment of capital in such ventures. The American rule is that this value is to be determined at the end of the voyage on which the collision occurred and damage was done; that the methods pointed out in the statute and rules are not exclusive, but that, the libel having been filed, the

admiralty court has jurisdiction to proceed to ascertain this value by procedure proper under the circumstances of the particular case, preferably, if possible, by appraisal or sale under order of the court. The principal object of the statute is to change the common-law liability, and restrict the liability of the shipowner to the value of the vessel at the termination of the voyage and the earned freight. *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

Cases of personal injury and death.—This section applies to cases of personal injury and death, as well as to cases of loss or injury to property. *The Rochester*, (W. D. N. Y. 1916) 230 Fed. 519; *State v. Daggett*, (1915) 87 Wash. 253, 151 Pac. 648, L. R. A. 1916A 446.

Negligence of agent.—A shipowner, who has provided a suitable person as his

agent to inspect or provide for the proper equipment of the vessel, is not deprived of the benefit of the statute limiting liability by proof of negligence of such agent in failing to provide such equipment or to maintain it in good condition of which the owner had no knowledge or notice. *The Alola*, (E. D. Va. 1915) 228 Fed. 1006.

Negligence of superintendent.—Where the superintendent of the owner of a floating derrick or hoist failed to exercise a proper degree of care in directing the manner in which work was to be performed and in inspecting the equipment and appliances for doing such work, it was held that liability for the injury of an employee arose with the knowledge and privity of the owner. *The Teddy*, (W. D. N. Y. 1915) 226 Fed. 498.

A surrender upon a petition to limit liability at a date long after the liability was incurred, can only be allowed where the boat has not depreciated beyond ordinary wear and tear. In other words, if the owner surrenders the boat, or desires to substitute a bond for the same, the amount of the surrender must equal the fair value for the boat at the time when the liability was incurred. The owner of the boat has no right to limit his responsibility by surrendering the property, and at the same time use up that property to his own profit. *The T. W. Wellington*, (E. D. N. Y. 1916) 235 Fed. 728. See *The Capt. Jack*, (D. C. Conn. 1909) 169 Fed. 455, wherein it was held that a petition to limit liability will be dismissed if the entire vessel is not surrendered.

Waiver.—The right secured to the shipowner by this section is not waived by a failure to assert it before a decree is entered against him. *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

Vol. IV, p. 850, sec. 4285.

The effect of the proceedings to limit liability as provided for in this section is to halt all claimants against the vessel or its owner in every other tribunal except the one in which such proceedings are pending. But this is true only when the petitioner shall have transferred the vessel as she was at the end of the voyage on which the liability occurred, or in lieu of such transfer shall have furnished a stipulation for the amount of her value at the end of such voyage to be ascertained by a due appraisal caused to be made by the court. *The American*, (N. D. Cal. 1915) 230 Fed. 853.

Time of transfer.—It has been held that a surrender upon a petition to limit liability, at a date long after the liability was incurred, could only be allowed where the boat had not depreciated beyond ordinary wear and tear. In other words, if the owner surrendered the boat, or desired to substitute a bond for the same the amount of the surrender must equal

the fair value for the boat at the time when the liability was incurred. *The Passaic*, (E. D. N. Y. 1911) 190 Fed. 644; *The T. W. Wellington*, (E. D. N. Y. 1916) 235 Fed. 728.

The vessel must be transferred as the was at the end of the voyage on which the liability accrued. *The Americana*, (N. D. Cal. 1915) 230 Fed. 853.

Vol. IV, p. 852, sec. 18.

Direct personal contracts.—A part owner of a vessel, who signs his firm's name to a charter party containing an express warranty of seaworthiness, is personally bound thereby, and, where sued for the loss of the cargo, occasioned by the unseaworthiness of the vessel, cannot, however blameless he may have been, claim the benefit of this section. *Pendleton v. Benner Line*, (1918) 246 U. S. 353, 38 S. Ct. 330, 62 U. S. (L. ed.) 770, *affirming* (C. C. A. 2d Cir. 1914) 217 Fed. 497, 133 C. C. A. 349.

Death claims.—*Following* *Richardson v. Harmon*, (1911) 222 U. S. 96, 32 S. Ct. 27, 56 U. S. (L. ed.) 110, the court held in *The Rochester*, (W. D. N. Y. 1916) 230 Fed. 519, that the owner of the steamship may limit its liability for death claims and that such claims are embraced by the words "any and all debts and liabilities" of this section.

Vol. IV, p. 854, sec. 1.

Negligence in storage.—It is not a sufficient compliance with the provisions of this section merely to give proper care, custody, and caution to the loading and stowage of cargo before sailing, but that duty continues throughout the voyage. *The Skipton Castle*, (C. C. A. 9th Cir. 1917) 243 Fed. 523, 156 C. C. A. 221, *affirming* (N. D. Cal. 1915) 223 Fed. 839.

Negligence of owner or servants.—Bills of lading cannot consistently, either with this section or with public policy or general principles of maritime law, stipulate for exemption from liability for losses resulting from the negligence of the owner or its servants. *Gilchrist Transp. Co. v. Boston Ins. Co.*, (C. C. A. 6th Cir. 1915) 223 Fed. 716, 139 C. C. A. 246.

Vol. IV, p. 856, sec. 2.

Bill of lading as affecting statutory requirements.—The stipulation of a bill of lading will not be permitted to cut down the statutory requirements of this section. *The Benjamin Noble*, (C. C. A. 6th Cir. 1917) 244 Fed. 95, 156 C. C. A. 523.

Vol. IV, p. 857, sec. 3.

IN GENERAL (p. 857)
Exemption applicable only after voyage has commenced.—This section applies to a vessel only after the voyage has com-

menced, and cannot be invoked by an owner to relieve him from liability for loss of cargo through the careening and sinking of a vessel at the pier before she was fully loaded, due to the negligence of a watchman in failing to adjust her lines to permit her to drop with the tide. *Ralli v. New York, etc., Steamship Co.*, (C. C. A. 2d Cir. 1907) 154 Fed. 286, 83 C. C. A. 290; *Gilchrist Transp. Co. v. Boston Ins. Co.*, (C. C. A. 6th Cir. 1915) 223 Fed. 716, 739, 139 C. C. A. 246.

SEAWORTHY VESSEL (p. 860)

Affirmative evidence of seaworthiness.

—The Harter Act has no application to a case showing damage to cargo by seawater where there is no affirmative evidence showing that the vessel was seaworthy at the beginning of the voyage, or even at a time approximately near its beginning. Such proof cannot be supplied by inference or presumption. *Herman v. Compagnie Generale, etc.*, (C. C. A. 2d Cir. 1917) 242 Fed. 859, 155 C. C. A. 447.

Bad stowage.—The Harter Act will not relieve a vessel for bad stowage. *Gulden v. Hiljos De Jose Taya, etc.*, (E. D. N. Y. 1917) 243 Fed. 780.

BURDEN OF PROOF (p. 863)

Seaworthy vessel.—The relief afforded by this section to shipowners is purely statutory, and in order for a shipowner to avail himself of the exemption from liability for errors in management, the burden is on him to prove affirmatively that the vessel was seaworthy at the beginning of the voyage, or that due diligence had been used to make her so. *The Governor Powers*, (D. C. Mass. 1917) 243 Fed. 961.

Damage by sea water.—A carrier by water is charged with the burden of proving that damage to a cargo from sea water was occasioned by the perils of the sea within an exception in the bill of lading against dangers and accidents of the seas. *Jamison v. New York, etc., R. Co.*, (S. D. N. Y. 1917) 241 Fed. 389.

MINERAL LANDS, MINES AND MINING

Vol. V, p. 4, sec. 2318.

Coal lands.—This section includes coal lands. *Milner v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 431, 143 C. C. A. 13, citing *Mullan v. U. S.*, (1886) 118 U. S. 271, 6 S. Ct. 1041, 30 U. S. (L. ed.) 170.

As to the effect of this statute qualifying a grant of lands to a state by enabling Act, see *Milner v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 431, 143 C. C. A. 13, *distinguishing Sweet v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 421, 143 C. C. A. 3, wherein it was held that the grant of lands to Utah for school purposes was not a sale, and this section reserving mineral lands from sale was not applicable thereto.

Vol. V, p. 19, sec. 2324.

Record distinguished from location.—A location and its record are different things. The federal and some state statutes distinguish between them, the former even in authorizing local rules "governing the location" and "manner of recording." The statutory object is to protect and reward discoverers of mines. Discovery with intent to claim is the principal thing and vests an estate. The record is incidental machinery to secure to the discoverer his reward and to give notice to others. *Clark-Montana Realty Co. v. Butte, etc., Copper Co.*, (D. C. Mont. 1916) 233 Fed. 547.

Injunction.—A temporary injunction lies to suspend forfeiture proceedings against delinquent co-owners of mining claims until the questions involved can be determined upon their merits. *Pack v. Thompson*, (C. C. A. 9th Cir. 1915) 223 Fed. 635, 641, 642, 643, 645, 139 C. C. A. 181, 187, 188, 189, 191; *Pack v. Carter*, (C. C. A. 9th Cir. 1915) 223 Fed. 638, 139 C. C. A. 184.

Mining claims, how acquired.—Congress has provided how a mining claim can be acquired. In general, it may be acquired by a discovery of mineral, particularly of gold, silver, or copper, and the like, upon the public lands, and by staking the same off or marking it upon the ground, so that the boundaries may be plainly designated and readily ascertained. The right of continuous occupation may be maintained by keeping up the assessment work prescribed by law, and this without incurring the obligation toward the government of buying and paying for the land. When an individual entitled to the benefit of the statute has made location in accordance therewith, and gone into possession, he is said to be the owner and in possession of the mining claim thus located. Such a claim, when perfected, is declared to be "property in the highest sense of that term, which may be bought, sold, and conveyed, and will pass by descent." *Trinity Gold Dredging*

etc., *Co. v. Beaudry*, (C. C. A. 9th Cir. 1915) 223 Fed. 739, 139 C. C. A. 269.

Vol. V, p. 47. [*Act of Feb. 11, 1897.*]

Purpose of Act.—By this Act Congress intentionally limited the right of entry upon, and location of, oil lands to such lands as were “chiefly valuable therefor,” i. e., lands chiefly valuable for oil. Obviously, the government, as sovereign proprietor, could say what lands, if any, might be entered and located as for petroleum. It could if it saw fit deny the right to enter upon any such lands, and for the same reason could limit the lands upon which entry might lawfully be made. In this view of the situation, as to any lands not within the category specified in the statute, there is no invitation or authorization given to enter them, and in consequence no right can be obtained, as against the government, by so doing. *U. S. v. McCutcheon*, (S. D. Cal. 1916) 238 Fed. 575.

Contrasted with R. S. sec. 2319.—The Act of 1897 gives the right to enter on “lands” which are “chiefly valuable” for oil. R. S. sec. 2319, vol. V, p. 4, which has to do with the general right of the citizen to exploit the public mineral lands, recites that “all valuable mineral deposits” are declared open to exploration and purchase, and the lands in which they are found to occupation and purchase, etc. In other words, as to lodes and placers the right is given to explore and purchase “valuable mineral deposits” and “the lands in which they are found;” but with respect to petroleum the right is given only to enter and obtain patent to lands which not only contain petroleum but which are “chiefly valuable therefor.” In one case the value of the “deposits” is the criterion, and in the other, it is the value of the land.

U. S. v. McCutchen, (S. D. Cal. 1916) 238 Fed. 575.

“What discovery will suffice to meet the requirements under the Act of 1897? Though under that Act entry and patent were to be obtained pursuant to the placer mineral laws, yet it must be remembered that upon location and ‘discovery’ followed or accompanied by the expenditure of \$500, and upon application, patent from the government was to follow. R. S. sec. 2325 [vol. V, p. 31]. In this behalf I can see no escape from the conclusion that as against the government, if the defendant had made such a location of, and ‘discovery’ upon, the land in question, as to invest them with a right of property therein, they had made such location and ‘discovery’ as to entitle them, as a matter of law and of right to a patent. Conversely if they had made no such ‘discovery’ as to entitle them to a patent as against the government, they had made no such ‘discovery’ as to vest them with rights in and to the property.” *U. S. v. McCutchen*, (S. D. Cal. 1916) 238 Fed. 575, citing *McLemore v. Express Oil Co.*, (1910) 158 Cal. 559, 112 Pac. 59, 139 A. S. R. 147.

Vol. V, p. 54, sec. 2345.

Reservation of mineral lands.—While it has been the general practice of the United States to reserve mineral lands from homesteads, pre-emptions, sales and grants to railroad companies, an examination of the grants of lands to states for school purposes demonstrates the fact that it has been the practice of Congress to determine and declare by legislative act, in each case, and not by any settled public policy, whether or not mineral lands shall be reserved from the grant. *Sweet v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 421, 143 C. C. A. 3.

MONEY PAID INTO COURT

Vol. V, p. 70, sec. 995.

Default of recognizance.—Where pending a judgment of default of recognizance in a criminal case and scire facias proceedings the sureties pay money to the clerk it should be deposited in accordance with the terms of this section. *U. S. v. Smart*, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

Vol. V, p. 71, sec. 5504.

Moneys paid into court by government in condemnation proceedings.—In *U. S.*

Conway Lumber Co., (D. C. N. H. 1916) 234 Fed. 961, the facts showed that large sums of money having been paid into court by the government as compensation for lands taken, and controversies having arisen as to what parties were entitled to the damages awarded, it was ordered that certain sums should be held in abeyance to await the disposition of questions arising from conflicting claims; and, the parties interested having expressly stipulated to the end that such sums might be withdrawn from the registry of the court and deposited in certain

other national banks in order that interest should accrue while the funds were held in abeyance, the clerk, under such stipulations and orders thereon, withdrew the funds and deposited the same in cer-

tain specially designated national banks, other than the generally designated depository of the United States. It was held that the act of the clerk was not in violation of this section.

NATIONAL BANKS

Vol. V, p. 82, sec. 5136.

The cashier may transfer the paper of the bank without a resolution of the board of directors. *Memphis Cotton Oil Co. v. Gist*, (Tex. Civ. App. 1915) 179 S. W. 1090.

Vol. V, p. 91, sec. 5.

Waiver of withdrawal.—Where a shareholder gave notice, within the thirty days specified in the statute, of his desire to withdraw from the association, but in the meanwhile the bank declared a dividend from its profits, the greater part of which was earned prior to the expiration of its original charter, and subsequently to giving said notice the shareholder demanded and received said dividend, the previous withdrawal was thereby waived, and he ceased to have a right to the appraisal of his shares so that they should become a debt of the bank to him. *Smith v. Phillips Nat. Bank*, (1915) 114 Me. 297, 96 Atl. 217.

Vol. V, p. 93, sec. 5137.

The object of the restrictions was obviously threefold. It was to keep the capital of the bank flowing in daily channels of commerce; to deter it from engaging in hazardous real estate speculations; and to prevent the accumulations of large masses of such property in their hands, to be held, as it were, in mortmain. The intent, not the letter of the statute, constitutes the law. *Nashville Fourth Nat. Bank v. Stahlman*, (1915) 132 Tenn. 367, 178 S. W. 942, L. R. A. 1916A 568.

Real estate for banking house.—A national bank may rent banking rooms in a building to be constructed under an agreement to purchase of the building corporation some of its stock. And an agreement with the promoter by which he and his wife have an option to purchase the stock is valid. *Nashville Fourth Nat. Bank v. Stahlman*, (1915) 132 Tenn. 367, 178 S. W. 942, L. R. A. 1916A 568.

Purchase of business.—Conceding that a national bank cannot buy or deal in real estate as a means of investing its funds, there is no question that it can take title to such property as a means of saving itself from apprehended loss caused by a mistaken or ill-advised loan.

Moreover it may purchase a business for the same reason. *Kennewick First Nat. Bank v. Conway*, (1915) 87 Wash. 506, 151 Pac. 1129.

Vol. V, p. 109, sec. 5153.

Liability of bank to government.—In *National Bank of Commerce v. U. S.*, (C. C. A. 9th Cir. 1915) 224 Fed. 679, 140 C. C. A. 219, affirming judgment for the plaintiff in an action by the United States against a national bank depository to recover payments by the bank on checks drawn by an examiner of surveys and special disbursing agent for the Interior Department and payable to fictitious payees with forged indorsements of said examiner and agent, the court said: "The very simple and obviously reasonable and common-sense views of the situation is that the bank was the depository of public moneys, to be drawn upon by the government or its authorized agent for public use, and it can make no sort of difference whether the bank is regarded as a debtor to the government to the amount of such moneys so deposited, or as holding the same in specie subject to the government's check or demand. The funds are nevertheless the funds of the government. Nor can it make any difference whether they are drawn out by the fraudulent practices of the government's agent, or paid out without lawful warrant by the bank; the liability of either to reimburse the government is just the same. While the bank may not be, and is not, liable criminally, it is liable civilly."

Vol. V, p. 133, sec. 5198.

II. PAYMENT OF USURY (p. 133)

Extension of renewal notes.—"There is a line of cases of actions, on renewal obligations for balance left due of an originally usurious debt after application of payments sufficient in amount to pay off and discharge all of the usury, which hold that in such situation the renewal obligation is purged of the usury and there may be recovery upon it in suits by the creditor against the debtor. . . . The rule of these authorities, as noted, is applied even in cases of suits by the creditor on the executory contract in question. But

they were not controlled by such a statute as said section 5198 with its phraseology with respect to the forfeiture of 'the entire interest,' and hence we do not consider that such rule would be applicable to a suit by a national bank on the executory obligation. But we do think that this rule should apply to suits by the debtor to recover the penalty provided by the statute with respect to leaving undisturbed all payments of interest actually made and applied is in accordance with the principle underlying such rule." *Baker v. Lynchburg Nat. Bank*, (1917) 120 Va. 208, 91 S. E. 157.

Usurious discount.—Usury is not paid within the meaning of the section where, on the simple discount of a note or bill at a usurious rate, the bank pays over the proceeds less the discount to the transferrer or borrower or credits such proceeds on his account. In such case usury is not paid until the note is paid or a judgment is entered therefor, for up to such time there is a locus penitentiae for the party charging the excessive interest. *Baker v. Lynchburg Nat. Bank*, (1917) 120 Va. 208, 91 S. E. 157.

IV. PENALTY (p. 136)

Parties.—Where a note containing usurious interest is transferred and indorsed to a third party by the nominal payee, and the borrower pays the note in full to such third party, his right of action to recover double the amount of interest paid, as provided by section 5198, is against the party who took and received such interest, and the payee is not a necessary party defendant. *Wellston First Nat. Bank v. Sensebaugh*, (Okla. 1916) 160 Pac. 455.

Limitation of action.—"There is no limitation of time within which the defense given by the statute may be made by the debtor when sued by the bank. If he pleads and proves that the debt agreed to be paid is usurious, all interest on such debt, legal as well as illegal, is forfeited, and there can be no judgment rendered except for the principal only sued for." *Baker v. Lynchburg Nat. Bank*, (1917) 120 Va. 208, 91 S. C. 157.

Pleading.—A petition against a national bank, filed for the recovery of alleged usurious interest, should contain an allegation that the taking and receiving of the same was knowingly done, or an allegation to an equivalent effect, and where such an averment is lacking it is error to overrule a general demurrer thereto. *Temple Nat. Bank v. Johnson*, (Okla. 1916) 161 Pac. 535.

In an action to recover twice the amount of interest paid on a usurious note, where a copy of the note is attached to the petition, and the date thereof, amount of interest charged, and consideration both on its face and in fact, are

shown, and it is further alleged that the interest charged was in excess of the legal rate, and that the defendant well knew that said interest charged was in excess of the legal rate, and that defendant well knew that said interest so charged by defendant and paid by plaintiff was corrupt and unlawful, notwithstanding which defendant knowingly and unlawfully received the same of the plaintiff, a cause of action is sufficiently stated, as against a demurrer thereto. *Wellston First Nat. Bank v. Sensebaugh*, (Okla. 1916) 160 Pac. 455.

It is not necessary to allege and prove a demand for the return of the usury claimed. *Pauls Valley Nat. Bank v. Mitchell*, (Okla. 1916) 154 Pac. 1188; *Wellston First Nat. Bank v. Green*, (Okla. 1916) 155 Pac. 502; *Commercial Nat. Bank v. Phillips*, (Okla. 1916) 160 Pac. 920.

Scienter.—To entitle the plaintiff to recover for usurious interest paid, it must be shown by a preponderance of the evidence "that the taking, receiving, reserving, or charging" of interest greater than allowed by the preceding section, was knowingly done. *Soper First Nat. Bank v. Beecher*, (Okla. 1916) 161 Pac. 327.

Where the facts are undisputed and show a simple loan of money, upon which a sum is collected as interest in amount greatly in excess of that allowed by law, there being no other contracts or transactions involved, and the whole matter being carried on by one of the officers of the defendant bank, the trial court is justified in assuming that the collecting of such usurious interest was knowingly done, and in peremptorily charging the jury to return a verdict for the plaintiff. *Commercial Nat. Bank v. Phillips*, (Okla. 1916) 160 Pac. 920.

Instruction.—In *Wellston First Nat. Bank v. Sensebaugh*, (Okla. 1916) 160 Pac. 455, it was held that the trial court did not err in refusing to give an instruction that the action was controlled by the federal statute, and not by the laws of the state of Oklahoma, relating to usury, where the requirements of the federal statute, applicable to the issues, were fully and correctly given in the instructions.

An instruction of the court directing a verdict to be rendered for the plaintiff in an amount in excess of the amount shown by the evidence, that the plaintiff is entitled to recover, is prejudicial error. *Soper First Nat. Bank v. Beecher*, (Okla. 1916) 161 Pac. 327.

V. STATUTORY REMEDY EXCLUSIVE (p. 138)

State statutes relating to usury, and prescribing penalties for the charging, reserving, or taking of usury, have no application to negotiable instruments held

by national banks. *Reese v. Colquitt Nat. Bank*, (1913) 12 Ga. App. 472, 77 S. E. 320; *Pauls Valley Nat. Bank v. Mitchell*, (Okla. 1916) 154 Pac. 1188; *Wellston First Nat. Bank v. Green*, (Okla. 1916) 155 Pac. 502.

Vol. V, p. 143, sec. 5205.

Stock purchased from an officer of the bank through fraudulent misrepresentation is nevertheless liable to assessment. *Ryan v. Mt. Vernon Nat. Bank*, (C. C. A. 2d Cir. 1915) 224 Fed. 429, 140 C. C. A. 123.

Vol. V, p. 145, sec. 5209.

I. IN GENERAL (p. 146)

Construction of section.—This statute "creates and defines several distinct offenses, probably not less than nine;" and though the section terms them misdemeanors it has been held that they are all felonies, involving as they do imprisonment in the penitentiary for a term of years. *Sheridan v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 305, 149 C. C. A. 437.

II. EMBEZZLEMENT (p. 147)

The receiver of a national bank is not an "agent" within the meaning of this section. *U. S. v. Weitzel*, (1918) 246 U. S. 533, 38 S. Ct. 381, 62 U. S. (L. ed.) 872.

III. ABSTRACTING FUNDS, ETC., (p. 147)

Elements of offense.—In *Cummins v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 844, 147 C. C. A. 38, wherein it appeared that one Cummins was convicted in the court below of aiding and abetting a clerk of national bank to violate section 5209, by abstracting therefrom without payment certain drafts and attached bills of lading, etc., the court said: "This statute expressly makes the intent of the bank clerk to injure or defraud or deceive and the like intent of the person aiding or abetting him an essential element of the offense."

Sufficiency of indictment.—The indictment in *Sheridan v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 305, 149 C. C. A. 437, was held sufficient for abstraction of a general deposit.

IV. MISAPPLICATION OF FUNDS, ETC. (p. 148)

Indictment.—In *Stout v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 799, 142 C. C. A. 323, the appellant urged that the fifth count of the indictment under which alone conviction was had did not charge a public offense. But the court said: "We think it does. In the proximity of words, there is plainly discernible the substance of a charge that the accused, whilst president of the bank and by use of the authority of his position, loaned its funds to the mill company, which was known by him to be hopelessly insolvent, not so known to

the bank or its directors, and under circumstances naturally leading to the loss of the money loaned, and so resulting—all with intent to injure and defraud the bank. This, with the details set forth, sufficiently states an offense under the statute."

VI. FALSE ENTRIES (p. 150)

Who liable.—The receiver of a national bank is not an "agent" within the meaning of this section. *U. S. v. Weitzel*, (1918) 246 U. S. 533, 38 S. Ct. 381, 62 U. S. (L. ed.) 872.

Issuing certificate of deposit—Indictment.—In *Simpson v. U. S.*, (C. C. A. 9th Cir. 1916) 229 Fed. 940, 144 C. C. A. 222, an indictment charged that, on the 27th day of March, 1913, at Caldwell, in the county of Canyon and state of Idaho, one S. D. Simpson, cashier of a national bank association known as the American National Bank of Caldwell, did wilfully, unlawfully, and feloniously, without authority from the directors of said association, and with intent to injure and defraud said association, issue and put forth a certain certificate of deposit drawn upon said association in the sum of \$2,500, therein and thereby certifying that there had been deposited by one W. G. Simpson in and with said association the sum of \$2,500, whereas in truth and in fact the said W. G. Simpson, to whom said certificate of deposit was so issued and put forth, did not have at the time said certificate of deposit was so issued and put forth, on deposit with said association an amount of money equal to the amount then and there specified in such certificate, or any amount or sum of money whatsoever, as he, the said W. G. Simpson, then and there well knew. It was then further charged that the said W. G. Simpson did, at the time and place aforesaid, unlawfully and feloniously and with the intent to injure and defraud the said association, and without authority from the directors, aid, abet, incite, counsel, and procure the said S. D. Simpson as such cashier to wilfully, unlawfully, and feloniously, and with the intent aforesaid issue and put forth the said certificate of deposit in manner and form aforesaid, he, the said W. G. Simpson, then and there well knowing that he did not have the said sum of \$2,500 or any other sum on deposit with said association. This indictment was held good on demurrer. It was further held that a refusal of the court to admit testimony of a ratification by the directors of the issuance of the certificate of deposit was not error.

VII. AIDERS AND ABETTORS (p. 152)

Venue.—An aider and abettor may be prosecuted in any court having jurisdiction of the principal. *Hoss v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 328, 146 C. C. A. 376.

Vol. V, p. 152, sec. 5211.

Contents of report.—While it is not expressly required that these reports should contain a true statement of the condition of the association yet by necessary implication, such is the character of the statement required to be made, and by the like implication the making and publishing of a false report is prohibited. *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788, reversing on another question (1913) 93 Neb. 121, 139 N. W. 844, 1135.

Liability for false reports.—Bank officers making such false reports are liable for losses resulting to persons who, in reliance upon such reports, are induced to deposit funds in the bank. *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788, reversing (1913) 93 Neb. 121, 139 N. W. 844, 1135.

Vol. V, p. 157, sec. 5219.**I. LIMIT OF STATE TAXATION (p. 157)**

Shares of stock in a federal reserve bank owned by a national bank are taxable under this section. *Cincinnati First Nat. Bank v. Durr*, (S. D. Ohio 1917) 246 Fed. 163.

Taxation of shares of state bank owned by a national bank is permitted. *California Bank, etc. v. Roberts*, (1916) 173 Cal. 398, 160 Pac. 225.

II. THE RULE AS TO DISCRIMINATION (p. 159)

Different systems or method of taxation.—The language of the statute clearly prohibits discrimination against shareholders in national banks and in favor of the shareholders of competing institutions, but it does not require that the scheme of taxation shall be so arranged that the burden shall fall upon each and every shareholder alike, without distinction arising from circumstances personal to the individual. And a state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. *A. J. Tower Co. v. Com.*, (1916) 223 Mass. 371, 111 N. E. 966.

III. EXEMPTIONS AND DEDUCTIONS (p. 163)

State bonds.—The statutory rule that the rate of taxation upon the shares in a national bank should be the same or not greater than upon the moneyed capital of the individual citizen which is liable to taxation, was not intended to cut off the power of the legislature to exempt bonds of the state from taxation. And this

exemption extends to shares of stock in a bank holding such bonds, and entitles the individual shareholders to deduct from the value of their shares that proportion of the value invested in the bonds. *In re Chickasha First Nat. Bank*, (Okla. 1916) 160 Pac. 469, L. R. A. 1917B 294.

Vol. V, p. 166, sec. 5220.

Action by creditor against bank in liquidation—statute of limitations.—Since a national bank which has gone into voluntary liquidation has not terminated its existence or ceased to be a corporate entity, an action by a creditor against a national bank in liquidation is not controlled by a state statute of limitations limiting the right to sue a corporation to three years after its dissolution. *Standard Trust Co. v. Commercial Nat. Bank*, (C. C. A. 4th Cir. 1917) 240 Fed. 303, 153 C. C. A. 229, where the court said: "True, it may not longer engage in the banking business or otherwise exercise its customary functions, but it remains nevertheless a corporation capable of suing and being sued."

The duty of liquidating agent and the rights of creditors are analogous to those of a receiver appointed by the comptroller of the currency. By R. S. sec. 5236, the comptroller is required to make a ratable dividend of the money paid to him, after providing for the redemption of the notes of the bank, on all such claims as may have been proved to his satisfaction, or adjudicated in a court of competent jurisdiction, etc. So where a bank went into liquidation under the text R. S. sec. 5220, and in an action in a state court, against the bank by a creditor, with service of summons on the liquidator, the creditor recovered judgment, and docketed the same as a lien under the state statute, and on a subsequent creditor's bill in the federal court by another creditor a receiver was appointed to whom the liquidator, pursuant to an order of said federal court, turned over all the property of the bank in his hands, it was held that the judgment creditor in the first mentioned action had acquired no lien upon such property by the prior docketing of his judgment, and that "the only effect of the judgment was to fix the amount of the debt." *Merchants' Nat. Bank v. Lillington Nat. Bank*, (E. D. N. C. 1916) 231 Fed. 556.

Vol. V, p. 170, sec. 5234.**ENFORCEMENT OF LIABILITY OF SHAREHOLDERS (p. 173)**

Withdrawal of assessment.—An assessment made by the Comptroller of the Currency upon the shareholders in an insolvent national bank may be withdrawn by him before it is paid, or when it is

partly paid, if he shall conclude that further payment is not necessary, and there is no prescribed form in which such action shall be taken. *Karbly v. Springfield Sav. Inst.*, (1917) 245 U. S. 330, 38 S. Ct. 88, 62 U. S. (L. ed.) 326.

Vol. V, p. 180, sec. 5239.

Common-law liability of director—*In general.*—In *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000, the court said: "This section was considered in *Yates v. Jones Nat. Bank*, 206 U. S. 158, 179, 51 U. S. (L. ed.) 1002, 1014, 27 S. Ct. 638, and it was held that the rule expressed by it is exclusive and precludes a common-law liability for fraud and deceit."

But in *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740, replying to the contention that there is no common-law liability of a director of a national bank, the court said: "The proposition seems to be based upon counsel's misconception of what was held and said by the Supreme Court in *Yates v. Jones Nat. Bank*, [1907] 206 U. S. 158, 27 S. Ct. 638, 51 U. S. (L. ed.) 1002. I cannot gather anything from the opinion in that case which would warrant such a construction, but, on the other hand, it appears to me very clear that the court recognized that there is a liability on the part of national bank directors for failure to perform the duty which the general principles of the law cast upon them when they become directors, distinct from and in addition to the duties and liabilities imposed by the statute. . . . That case simply decided that the National Bank Act (Act June 3, 1864, ch. 106, 13 Stat. L. 99) imposes upon directors of national banks duties which did not rest upon them at common law, and that section 5239 affords the exclusive rule by which to measure the right to recover damages, based upon a loss resulting solely from the violation of such duties. The same question as is here presented was raised in *Allen v. Luke*, 163 Fed. 1018 (C. C. Mass. 1908), and was decided adversely to defendant's contention; Judge Lowell entertaining the same view of *Yates v. Jones National Bank* as is here expressed. That there exists a liability on the part of national bank directors for failure to perform the duty imposed upon them by the general principles of the law, irrespective of the statute, is, I think, also clear from *Briggs v. Spaulding*, [1891] 141 U. S. 132, 11 S. Ct. 924, 35 U. S. (L. ed.) 662, where the measure of such duty is defined. See, also, *Rankin v. Cooper*, 149 Fed. 1010 (W. D. Ark. 1907)." And see also *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788; *Freeman v. Jackson*, (N. D. Ga. 1915) 227 Fed. 688; *Bates v. Dresser*, (D. C. Mass. 1915) 229 Fed. 772.

"The statutory liability of directors of national banks, as provided in section 5239, is undoubtedly the exclusive rule by which to measure the right to recover damages from directors based upon a loss alleged to have resulted solely from violation by such directors of a duty expressly imposed upon them by a provision of the National Banking Act. This was directly decided in *Yates v. Jones Nat. Bank*, (1907) 206 U. S. 158, 27 S. Ct. 638, 51 U. S. (L. ed.) 1002, and is approvingly referred to in *Thomas v. Taylor*, (1912) 224 U. S. 73, 32 S. Ct. 403, 56 U. S. (L. ed.) 673. But in the former case the Supreme Court was very careful not to announce any rule whereby the law will relieve directors who are the active officers of the bank, and who knowingly and deliberately and repeatedly commit acts of such negligent management that the result has forced the bank into liquidation." *McCormick v. King*, (C. C. A. 9th Cir. 1917) 241 Fed. 737, 154 C. C. A. 439.

Survival of action.—A common-law right of action against national bank directors to recover for losses resulting from the negligent discharge of their duties survives against the personal representatives of deceased directors. *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740. See also *Bates v. Dresser*, (D. C. Mass. 1915) 229 Fed. 772.

Jurisdiction of suit.—Judicial Code, § 24, par. sixteenth (see 1912 Supp., p. 140), gives jurisdiction to United States District Courts, regardless of the sum or value of the matter in controversy, of all "cases for winding up the affairs" of any national banking association. In *Bates v. Dresser*, (D. C. Mass. 1915) 229 Fed. 772, a suit in equity by a national bank receiver, the plaintiff's claim of a right to recover was based upon the ground that the defendants, as president and directors of the bank, were bound to use due care and diligence in the management and supervision of its affairs, and that, through their negligence in this respect, they failed to discover the defalcations of the bank's bookkeeper in season to prevent the whole or any part of the losses which the bank sustained during the three years and three months that his speculations were going on. The court said: "As there is no diversity of citizenship, and the ground of action is for a breach of their duties as directors at common law and in equity, federal jurisdiction depends upon the fact that the proceeding is brought by a receiver of a national bank in the course of winding up its affairs and is sanctioned by section 24, paragraph 16."

Pleading.—In *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740, it was held that the bill by a national bank receiver sufficiently charged liability, as against a motion to dismiss.

Statutory liability of directors—*Care required in management.*—In *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501, a bill in equity by a national bank receiver to enforce personal liability of the bank's directors for alleged misconduct and mismanagement, the court said: "The illegal acts charged against the defendants fall into two classes: First, those which are claimed to be violations of the National Bank Acts; and, second, those which are alleged to constitute a breach of duty by the directors as agents of the bank, under the common law. It is entirely clear under the authorities that a different measure of liability must be applied in the two cases. In the former the duty imposed is that enjoined by the statute; and, where a statute creates a duty and prescribes a penalty for nonperformance, the rule provided in the statute is the exclusive test of liability."

"Knowingly violate, etc."—In *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501, speaking of *Thomas v. Taylor*, (1912) 224 U. S. 73, 32 S. Ct. 403, 56 U. S. (L. ed.) 673, the court said: "In that case the comptroller of the currency had given notice to the directors of a national bank to collect or charge off certain assets as doubtful. In disregard of this notice, a statement was made representing the assets to be good, and it was held that the directors had disregarded the direction of the officers appointed by the law to examine the affairs of the bank, whose directions must be observed, and that a violation is in effect intentional, when one deliberately refuses to examine that which it is his duty to examine. This case was again before the Supreme Court ([1916] 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788), and the court affirmed again that the test of liability was not negligence, but the fact that the act was violated knowingly. . . . It is clear, therefore, that the words of the statute 'knowingly violate, or knowingly permit to be violated,' still stand as the test of civil liability. These words are not obscure or of doubtful meaning, and must be given effect in applying the statute."

Ultra vires transaction.—In *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501, the plaintiffs sought to charge the defendant directors with liability for losses resulting from an alleged ultra vires investment. But after reviewing the evidence the bill was dismissed.

False reports to comptroller of currency.—Directors incurred personal liability to unpaid depositors for damages attributable to false representations of the bank's condition in official reports made to the comptroller of the currency and published pursuant to R. S. sec. 5211, where such directors knew that said representations were false when they attested

said reports, or with such knowledge otherwise participated in or assented to the making and publication of said reports. *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788 (reversing (1913) 93 Neb. 121, 139 N. W. 844, 1135) holding that judgments for the plaintiff were supported by substantial evidence, the court also saying: "Whether this or that director attested a particular report is not controlling upon the question of assent. The official reports required by law are the reports of the bank, and not simply of those signing and attesting."

"In *Yates v. Jones Nat. Bank*, [1907] 206 U. S. 179, 27 S. Ct. 638, 51 U. S. (L. ed.) 1002, . . . the Supreme Court of Nebraska, affirming the decision of a state court, had held the directors of a national bank liable for making false statements to the comptroller of the currency. It had held that the means of information were accessible to them, and whether the attesting directors possessed knowledge of the falsity of the report was wholly immaterial. The judgment of the court below was reversed, on the sole ground that it did not appear that the violation in question was intentional." *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501.

Charging usurious interest.—In a suit to charge the directors with personal liability it was immaterial that they, on behalf of the bank, charged usurious interest on a loan where there was no evidence whatever that any damages were sustained thereby. *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501.

Form of remedy.—A receiver of a national bank may maintain a bill in equity against directors for an accounting and for recovery for losses sustained by creditors and shareholders as a result of the defendants' misconduct within this section. *Dudley v. Hawkins*, (S. D. Ga. 1917) 239 Fed. 386. See also for such bills *Freeman v. Jackson*, (N. D. Ga. 1915) 227 Fed. 688; *Bates v. Dresses*, (D. C. Mass. 1915) 229 Fed. 772; *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740; *Bailey v. Babcock*, (W. D. Pa. 1915) 241 Fed. 501; *McCormick v. King*, (C. C. A. 9th Cir. 1917) 241 Fed. 737, 154 C. C. A. 439.

Venue.—A joint suit against directors for their joint negligence and misconduct where the defendants reside in different federal districts in the same state may be brought in either district as provided in Judicial Code, § 52, in title JUDICIARY, 1912 Supp., p. 153. *Dudley v. Hawkins*, (S. D. Ga. 1917) 239 Fed. 386.

State courts have jurisdiction of suits against directors to enforce their personal liability for damages as provided in this section. *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788.

Suit by receiver.—In *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740, the court sustained a bill in equity by a national bank receiver to enforce the liability of directors under this section. See also *Freeman v. Jackson*, (N. D. Ga. 1915) 227 Fed. 688, 697.

Pleading.—In *Williams v. Brady*, (D. C. N. J. 1916) 232 Fed. 740, it was held that a receiver's bill against certain directors sufficiently alleged a common-law liability for losses resulting from the defendants' wilful and continued failure to attend meetings of the board of directors.

In *Dudley v. Hawkins*, (S. D. Ga. 1917) 239 Fed. 386, a bill in equity by a national bank receiver against directors of the bank, for an accounting and for recovery of losses sustained by creditors and shareholders, a motion to dismiss, which was in substance a demurrer on several grounds, was denied.

Vol. V, p. 196, sec. 5198.

Suit to enforce personal liability of directors.—A federal question is involved, giving a federal District Court jurisdiction, without regard to citizenship, in an action to enforce the personal liability of directors in a national bank, under R. S. sec. 5239, for the damages suffered by one who has purchased capital stock in such bank in reliance upon false reports of the bank's financial condition to the comptroller of the currency, attested

by them, and upon the declaration of dividends out of capital instead of out of net profits, assented to by them. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000, *affirming* (C. C. A. 6th Cir. 1912) 195 Fed. 875, 116 C. C. A. 465, (C. C. A. 6th Cir. 1915) 221 Fed. 912, 137 C. C. A. 482.

1914 Supp., p. 271, sec. 11.

Paragraph (k) is constitutional.—*Bay City First Nat. Bank v. Fellows*, (1917) 244 U. S. 416, 37 S. Ct. 734, 61 U. S. (L. ed.) 1233, L. R. A. 1918C 283, *reversing* (1916) 192 Mich. 640, 159 N. W. 335. See *contra*, *People v. Brady*, (1915) 271 Ill. 100, 110 N. E. 864, Ann. Cas. 1917C 1093.

Validity of state statute affecting administrators, etc.—A state statute providing that "no trust company, loan and trust company, loan and banking company, bank or banking company, or similar corporation, shall hereafter be appointed administrator of an estate, executor under a will, or guardian or conservator of the person or property of another," is valid and effective notwithstanding paragraph k and notwithstanding the fact that it was enacted subsequently to the Federal Reserve Act. *Woodbury's Appeal*, (N. H. 1915) 96 Atl. 299.

NATURALIZATION

Vol. V, p. 200.

Naturalization of aliens in navy or marine corps, see NAVY, *post*, p. 1347.

Vol. V, p. 207, sec. 2169.

History of section.—This section originally formed part of the Naturalization Act of 1870 as amended in 1875. *In re Mallari*, (D. C. Mass. 1916) 239 Fed. 416.

This section was not repealed by implication by Naturalization Act of June 29, 1906, 1909 Supp., p. 365. *In re Mallari*, (D. C. Mass. 1916) 239 Fed. 416.

"Aliens."—Until the passage of Act of June 29, 1906, § 30, 1909 Supp., p. 379, only persons described in this section could be naturalized. R. S. sec. 2169, extended the benefit of the naturalization laws only to aliens, but said section 30 of the Act of June 29, 1906, broadened the laws to include persons owing allegiance to the United States, it being aimed at persons from Porto Rico and the Philippine Islands who are not aliens.

In re Mallari, (D. C. Mass. 1916) 239 Fed. 416.

Filipino.—In the case of *In re Lampitoe*, (S. D. N. Y. 1916) 232 Fed. 382, the facts were stated as follows: The petitioner was the son of a Filipino mother and of a father whose mother was a Filipino and whose father was a full-blooded Spaniard, resident in Manila. He had served one full term of enlistment in the United States Navy and was at the time of the proceeding serving another. He was in every way qualified for citizenship, unless his race prevented. On these facts the court said: "The case falls exactly within *In re Alverto*, [E. D. Pa. 1912] 198 Fed. 688, and needs no other consideration. There may be doubt about such cases as *In re Camille*, [C. C. Ore. 1880] 6 Fed. 256, or *In re Knight*, [E. D. N. Y. 1909] 171 Fed. 299; but where the Malay blood predominates it would be a perversion of language to say that the descendant is a 'white person,' certainly any white ancestor, no matter how remote, does not make all his descendants white."

This section modified (by construction) so as to admit Filipinos to citizenship, see notes to section 30 of Act of June 29, 1906, ch. 3592, *infra*, p. 1346.

Half-breed Filipino.—One whose father was a Spaniard and his mother a Filipino is not a "white" person as the term is used in this section. *In re* Rallos, (E. D. N. Y. 1917) 241 Fed. 686.

Hindus cannot be naturalized. *In re* Sadar Bhagwab Singh, (E. D. Pa. 1917) 246 Fed. 496.

Vol. V, p. 208, sec. 2171.

Petition by alien enemy—"At the time of his application."—Where a subject of the Emperor of Germany filed his petition for naturalization Jan. 11, 1917, and the application came up for hearing on April 14, 1917, the Congressional resolution declaring a condition of war with Germany having been passed April 6, 1917, the "hearing on the application" was "deferred until the termination of the war, or until further order of the court." *In re* Duns, (W. D. Wash. 1917) 245 Fed. 813. Similarly in *In re* Haas, (N. D. Tex. (1917) 242 Fed. 739; *In re* Jonasson, (D. C. Md. (1917) 241 Fed. 723; and in *Ex p.* Borchardt, (E. D. S. C. 1917) 242 Fed. 1006, the petition of the applicant was "refused, but without prejudice to him to renew his application after the conclusion of peace between the United States and Germany." And petitions were also denied in *In re* Naturalization of Germany Subjects, (E. D. Wis. 1917) 242 Fed. 971. *Contra*, *In re* Nannanga, (S. D. Ga. 1917) 242 Fed. 737, and *In re* Kreuter, (S. D. Cal. 1917) 241 Fed. 985, where the applicant German's petition was granted; *U. S. v.* Meyer, (C. C. A. 2d Cir. 1917) 241 Fed. 305, 154 C. C. A. 185, Ann. Cas. 1918C 704, *affirming*, by a divided court, an order granting a German's petition.

A man born in 1882 in Schleswig was, after April 6, 1917, an alien enemy. *In re* Jonasson, (D. C. Md. 1917) 241 Fed. 723.

Vol. V, p. 210, sec. 2174.

A "merchant vessel" does not of course include a private yacht. *In re* Cook, (D. C. N. J. 1917) 239 Fed. 782.

A petition under this section is sufficient though "unsupported by other evidence than 'the production of his certificate of discharge and good conduct' (during the term of his service in the merchant marine), 'together with the certificate of his declaration of intention to become a citizen,' and his own oath." *In re* Tancred, (E. D. Pa. 1915) 227 Fed. 329.

1909 Supp., p. 365, sec. 3.

Scope of Act.—This Act "was obviously intended to cover fully the subject of naturalization" and it repealed

various sections in the Revised Statutes, but not all. *In re* Mallari, (D. C. Mass. 1916) 239 Fed. 416.

As an aid to the construction of this Act the court may consider the reports of committees, the introduction of amendments, and the opposition made to the passage of the Act in its various forms. *In re* Valhoff, (S. D. Cal. 1916) 238 Fed. 405.

1909 Supp., p. 366, sec. 4.

Any doubt as to whether an alien is entitled to naturalization should be resolved in favor of the government, in view of the fact that the laws of the United States offer very fair and reasonable terms of admission to citizenship. *U. S. v.* Grimmer, (N. D. Ohio 1916) 236 Fed. 285.

1909 Supp., p. 366, sec. 4, cl. First.

Sufficiency of declaration—Renunciation of allegiance.—It has been held that a declaration which does not comply with this section in that it fails to renounce forever all allegiance and fidelity, particularly by name, to the prince, etc., to whom the applicant owed allegiance is insufficient. *Ex p.* Lange, (E. D. Mo. 1912) 197 Fed. 769; *In re* Stack, (W. D. Mo. 1912) 200 Fed. 330; *In re* Friedl, (E. D. Wis. 1913) 202 Fed. 300. But by what seems to be the better authority, a mistake made in a declaration of intention, in the name of the sovereign to whom the declarant renounced allegiance, is not so vital that it may not be amended by order of the court, or so material as to invalidate the certificate of naturalization procured thereon. *U. S. v.* Viaropoulos, (W. D. Pa. 1915) 221 Fed. 485; *U. S. v.* Orend, (W. D. Pa. 1915) 221 Fed. 777; *In re* Markowitz, (E. D. Pa. 1916) 233 Fed. 715; *In re* Denny, (S. D. N. Y. 1917) 240 Fed. 845.

Amendment.—Declarations of intention are part of the records of the court and may be amended but no record of the court should be changed unless the fact of error in the record as it stands clearly appears, and the state of the record as it should be has been shown with like clearness. *In re* Markowitz, (E. D. Pa. 1916) 233 Fed. 715; *In re* Schwarz, (E. D. Pa. 1916) 236 Fed. 146, where leave to amend a declaration of intention so as to show the declarant's real name was refused, where the only evidence on which to make the change was the testimony of the applicant. And see cases cited *supra*, this note, under side-head *Sufficiency of declaration*.

Renewal of old declaration.—The language of the paragraph to the effect that an alien making a "declaration" under the old law shall not "be required to renew such declaration" means that he shall not be required to renew—i. e.,

make anew—any declaration for the purpose of petitioning for citizenship; in other words, that the declaration already made by him shall be sufficient in form whenever he chooses to petition. *In re Valhoff*, (S. D. Cal. 1916) 238 Fed. 405.

An alien soldier in the service of the army who, upon his examination, states that it is not his intention to reside permanently in the United States, but that it is his intention, upon his discharge from the service, to return to his native country, to remain there permanently, is not entitled to naturalization either under the general naturalization statutes or the Act of May 9, 1918, ch. —, § 1, *ante*, this volume, title NATURALIZATION, p. 488. *In re Naturalization of Aliens, etc.*, (E. D. Mo. 1918) 250 Fed. 316.

1909 Supp., p. 366, sec. 4, cl. Second.

The provision as to the time for filing the petition—"Not more than seven years."—A declaration of intention made before the passage of this Act is not saved by the proviso of par. first of this section from the seven-year limitation in this section after the date of such declaration of intention. And an alien who has made a declaration of intention before the passage of this Act is required to file his petition for citizenship at a time not more than seven years after the date of such declaration of intention. *U. S. v. Morena*, (1918) 245 U. S. 392, 38 S. Ct. 151, 62 U. S. (L. ed.) 359.

One who filed his declaration of intention July 19, 1904, and his application for naturalization Dec. 14, 1916, more than seven years after this Act took effect was cut off and barred by this Act. *In re Bourke*, (D. C. Kan. 1917) 243 Fed. 794.

An alien's petition filed in a federal court after the expiration of the seven years is too late, notwithstanding his having, within the seven years, twice filed a petition in the state, which were there properly dismissed as the petitioner was not a resident within the territorial jurisdiction of the court. *U. S. v. Mueller*, (C. C. A. 8th Cir. 1917) 246 Fed. 679, 158 C. C. A. 635.

While the authorities differ as to the proper construction of the quoted words in the catchline the better rule seems to be that aliens declaring their intention to become naturalized after the passage of the Act must file their final application within seven years after the filing of the declaration of intention, and as to those who filed the declaration of intention before the enactment of the statute they must make their final application within seven years from the enactment of the Act. *Harmon v. U. S.*, (C. C. A. 1st Cir. 1915) 223 Fed. 425, 139 C. C. A. 19, following *In re Yunghauss*, (S. D. N. Y. 1914) 210 Fed. 545, *affirmed* (C. C. A.

2d Cir. 1914) 218 Fed. 168, 134 C. C. A. 67. See also *In re Lee*, (E. D. Mich. 1916) 236 Fed. 987, and *Linger v. Balfour*, (Tex. Civ. App. 1912) 149 S. W. 795, which supports the so-called "better rule," and *U. S. v. Lengyel*, (W. D. Pa. 1915) 220 Fed. 720, which opposes it and follows *Eichhorst v. Lindsey*, (W. D. Pa. 1913) 209 Fed. 708. See further in opposition *In re Valhoff*, (S. D. Cal. 1916) 238 Fed. 405.

Excluding date of application in computing time.—Where the declaration of intention was filed Oct. 16, 1912, a petition bearing date Oct. 15, 1914, was held not too early to satisfy the statutory provision that "no less than two years" should intervene between the filing of the declaration and the filing of the petition. *In re Puglisi*, (E. D. Pa. 1916) 230 Fed. 188.

Petition by minor.—"A petition for naturalization filed by a person under age of 21 years is void." *In re Cordaro*, (N. D. Ia. 1917) 246 Fed. 735, dismissing the petition.

Second proviso inserted by amendment, see notes to 1912 Supp., p. 277, § 3, *infra*, this title, p. 1346.

Filing certificate from Department of Commerce and Labor.—Filing the certificate of arrival as provided in this subdivision is an essential prerequisite to a valid order of naturalization; and "filing the certificate of arrival being a matter of substance, it is clear that no power is vested in the naturalization court to dispense with it." *U. S. v. Ness*, (1917) 245 U. S. 319, 38 S. Ct. 118, 62 U. S. (L. ed.) 321, *reversing* (C. C. A. 8th Cir. 1916) 230 Fed. 950, 145 C. C. A. 144, Ann. Cas. 1917C 41, which *affirmed* (N. D. Ia. 1914) 217 Fed. 169. In *In re Titone*, (E. D. N. Y. 1916) 233 Fed. 175, the court said: "Under the authority of *U. S. v. Ness*, [C. C. A. 8th Cir. 1916] 230 Fed. 950, [145 C. C. A. 144], *affirming* (N. D. Ia. 1914) 217 Fed. 169] it would seem that the failure to file a certificate of landing may be cured as an irregularity and hence in this case the actual presentation and filing of a proper certificate before the original date of hearing would be sufficient." *In re Liberman*, (W. D. Wash. 1912) 193 Fed. 301, held that the certificate must be filed at the time the petition is filed, otherwise the petition will be denied.

1909 Supp., p. 368, sec. 4, cl. Fourth.

"Resided continuously"—In general.—"The Naturalization Act of 1790 (Act March 26, 1790, ch. 3, 1 Stat. 103), and that of 1795 (Act Jan. 29, 1795, ch. 20, 1 Stat. 414), and that of 1802 (Act April 14, 1802, ch. 28, 2 Stat. 153), did not require aliens applying for citizenship to maintain a 'continuous' residence within,

the country for the prescribed period. But Act March 3, 1813, ch. 42, § 12, Stat. 809, first provided that the alien must have resided in the United States 'for the continued term of five years next preceding his admission,' and added, 'without being at any time during the said five years, out of the territory of the United States.' The last-mentioned clause was repealed by Act June 26, 1848, ch. 72, 9 Stat. 240. But since the act of 1813 the law has required residence for the continuous term of five years, or, as the act now reads, 'for the continued term of five years.' The fact that in the earliest acts a 'continuous' residence was not required, while in the latter acts and in the existing law it must be for a 'continued term,' is significant. It is also significant that, while retaining 'the continuous term' of the act of 1813, there has been eliminated the clause 'without being at any time during the said five years, out of the territory of the United States.' U. S. v. Mulvey, (C. C. A. 2d Cir. 1916) 232 Fed. 513, 146 C. C. A. 471.

"The act of Congress conferred the judicial power and imposed the judicial duty upon the court which heard the application of this alien to consider all the evidence and arguments presented to it, and to decide and find whether or not he had resided in the United States continuously for five years immediately preceding his application." U. S. v. Deans, (C. C. A. 8th Cir. 1916) 230 Fed. 957, 145 C. C. A. 151, *affirming* (W. D. Ark. 1913) 208 Fed. 1018.

"Continuously" is not used in this paragraph literally as requiring the applicant to remain at all time physically within the jurisdiction, but applies to change of domicile only. U. S. v. Shanahan, (E. D. Pa. 1916) 232 Fed. 169; *In re Reichenburg*, (M. D. Pa. 1917) 238 Fed. 859.

"The true construction of this requirement of five years' continuous residence within the United States is not that a temporary absence of a day, or a month, or of a few months, during the five years, is necessarily fatal to the continuity of the residence. It is that such an absence presents to the trial court the question of fact whether or not that absence and all the evidence before that court of the intention of the applicant, of the purpose and effect of his absence, and of all the facts and circumstances of the case, prove a breach in the continuity of his residence." U. S. v. Deans, (C. C. A. 8th Cir. 1916) 230 Fed. 957, 145 C. C. A. 151, *affirming* (W. D. Ark. 1913) 208 Fed. 1018.

Rules for applying this provision.—"The courts are agreed that, in applying the provision of the naturalization statute which requires continuous residence

within the United States for a period of five years next preceding the filing of the petition for citizenship, two rules should be followed and observed: (1) When actual residence within the United States is once established, the continuity of such residence will not be interrupted by temporary absences from the United States for the purpose of either business or pleasure, provided there is no intention to change or abandon the domicile. And (2) the question whether an alien has resided continuously in the United States for the required five years is one of fact to be determined from all the facts and circumstances in each particular case." U. S. v. Jorgenson, (W. D. Mich. 1916) 241 Fed. 412.

The word "resided" has the meaning of "lived." The applicant must be seen to have been a "resident" in the sense of "inhabitant" of, and bodily present in the United States continuously for five years immediately preceding application for final papers. Such an interpretation affords opportunity for departures and limited absences from the country for social or business reasons, while at the same time leaving none for a substantial interruption of that continuity of inhabitancy necessary to secure the effect of the provision. U. S. v. Grimmer, (N. D. Ohio 1916) 236 Fed. 285. See to the same effect U. S. v. Cantini, (W. D. Pa. 1912) 199 Fed. 857.

Continuous residence as question of fact.—"The intention of an alien as to his residence or domicile once established is a most important, and usually a controlling factor in determining his right to citizenship. . . . The question of intention is always one of fact to be determined from both actions and declarations, and oftentimes conduct is more persuasive than words." U. S. v. Jorgenson, (W. D. Mich. 1916) 241 Fed. 412, holding that an applicant's petition was properly granted, though he had been absent in the Panama Canal Zone during part of the five-year period.

The question of continuous residence is one of fact into which intention enters as a controlling element. U. S. v. Shanahan, (E. D. Pa. 1916) 232 Fed. 169.

Actual and substantial residence within the United States is required. U. S. v. Ginsberg, (W. D. Mo. 1914) 244 Fed. 209, holding that, on the evidence, the petitioner was and had been, throughout the required period, a resident of Brazil, the court saying: "While intention is one of the determining elements of residence; nevertheless intention alone is not sufficient but must be coincident with the physical act."

A traveling salesman may "reside continuously" within the United States, notwithstanding that he makes business trips abroad from time to time for his

employer. *In re Reichenburg*, (M. D. Pa. 1917) 238 Fed. 859.

Absence at sea.—In the case of *In re Cook*, (D. C. N. J. 1917) 239 Fed. 782, denying the petition of a sailor and native of Scotland, the court said: "I am called upon to decide, therefore, whether, under the circumstances before detailed, the petitioner has, . . . immediately preceding the date of his application, resided continuously within the United States for five years and within the state of New Jersey one year. I entertained no doubt at the hearing that the petitioner's alleged 'residence' in either was not sufficient to entitle him to be admitted to citizenship, but at the urgent request of his attorney took the matter under advisement, for the purpose of examining certain cases which he desired to submit. I have since examined all of them, and my original opinion is in no respect shaken."

Other cases.—One who has, of his own choice, been continuously without the United States for nearly half of the five-year period cannot be said to have "resided continuously" within the United States during that period. *U. S. v. Mulvey*, (C. C. A. 2d Cir. 1916) 232 Fed. 513, 146 C. C. A. 471; *U. S. v. Griminger*, (N. D. Ohio 1916) 236 Fed. 285.

And it is very clear that one who while a resident of the United States for one year immediately preceding the filing of an application for admission to citizenship was out of the country for the twenty years prior to the one year is not entitled to admission. *In re Brash*, (W. D. Wash. 1916) 235 Fed. 1003.

In the case of *In re Timourian*, (S. D. N. Y. 1915) 225 Fed. 570, the court said: "I think the opinion of Judge Betts, *In re An Alien*, [1842] 1 Fed. Cas. No. 201a, that of Judge Ward in the recent case of *In re Schneider*, [S. D. N. Y. 1903] 164 Fed. 335, and the language of Judge McPherson in *U. S. v. Cantini*, [C. C. A. 3d Cir. 1914] 212 Fed. 925, 129 C. C. A. 445, indicate that a man is not to be deprived of citizenship for lack of continuous residence for five years when he has established and kept a legal domicile in the United States for that time and been out of the country less than one-third of the period and then only by reason of unforeseen business exigencies."

Good moral character.—*In general.*—One of the essential qualifications for admission to citizenship is that the applicant shall be a man of good moral character. This must not only be alleged, but proved, before a certificate of citizenship may be granted. *U. S. v. Leles*, (N. D. Cal. 1916) 236 Fed. 784.

Maintaining place of bad repute.—An applicant for admission to citizenship does not possess a good moral character where the evidence shows that for some time prior to his admission to citizenship the

defendant had been conducting a place of bad repute in the community, a sort of combination saloon, restaurant, and lodging or rooming resort, some of the rooms being situated over the saloon and restaurant, and others in adjacent cottages in the rear; that the place was frequented by people of bad repute, both men and women, for evil and illicit purposes; and that the applicant himself was fully aware of the bad character of his resort and the class of people frequenting it. *U. S. v. Leles*, (N. D. Cal. 1916) 236 Fed. 784.

1909 Supp., p. 369, cl. Seventh, etc.

"Seven new subdivisions" were added to this section 4 by the Act of May 9, 1918, ch. —, § 1, *ante*, this volume, title NATURALIZATION, p. 488.

1909 Supp., p. 369, sec. 5.

Posting of names of substitute witnesses.—Whether where new witnesses are substituted their names must be posted, and for the length of time provided for the original witnesses as shown in section 6, there is a conflict of authority. The authorities are collected and considered in the case of *In re Giaquinto*, (S. D. N. Y. 1916) 230 Fed. 1004.

1909 Supp., p. 370, sec. 6.

"Final action."—The provision that in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition is mandatory but the remedy for a failure to comply with the provision is not a suit to cancel the certificate under section 15 but by objection in the proceedings themselves. *U. S. v. Salomon*, (C. C. A. 5th Cir. 1916) 231 Fed. 928, 146 C. C. A. 124, *affirming* (E. D. La. 1916) 231 Fed. 461.

1909 Supp., p. 370, sec. 9.

Hearing "in open court."—This section is specific and mandatory in requiring that the hearing be in open court, and that the applicant and witnesses be examined under oath "before the court and in the presence of the court" and, except as provided in section 10, the court is not authorized to receive or consider evidence taken by depositions out of the presence of the court. *U. S. v. Leles*, (N. D. Cal. 1915) 227 Fed. 189, *following* *U. S. v. Nisbet*, (W. D. Wash. 1909) 168 Fed. 1005. See to the same effect *U. S. v. Kolodner*, (M. D. Pa. 1912) 199 Fed. 809.

Hearing at chambers.—A final hearing is not had in open court, if, after the petition is first presented in open court, the hearing thereof is passed to and finally held in the chambers of the judge adjoining the court room, on a subsequent day

and at an hour earlier than that to which the court has been regularly adjourned. *U. S. v. Ginsberg*, (1917) 243 U. S. 472, 38 S. Ct. 422, 61 U. S. (L. ed.) 853, *reversing in effect* (W. D. Mo. 1914) 244 Fed. 209.

Res judicata.—The foundation of the doctrine of *res judicata* or estoppel by judgment is that both parties have had their day in court. A certificate of naturalization, procured *ex parte* in the ordinary way, has no conclusive effect as against the public. Such a certificate, including the judgment upon which it is based, is in its essence an instrument granting political privileges, and open like other public grants to be revoked if and when it shall be found to have been unlawfully or fraudulently procured. It is in this respect closely analogous to a public grant of land, or of the exclusive right to make, use and vend a new and useful invention. *Johannessen v. U. S.*, (1912) 225 U. S. 227, 32 S. Ct. 613, 56 U. S. (L. ed.) 1066. See also notes to 1909 Supp., p. 371, § 11, *infra*, this page.

But in the case of *In re Hartman*, (N. D. Ia. 1916) 232 Fed. 797, it was held that a proceeding under the statutes of the United States for the admission of an alien to citizenship was a case, suit, or cause of action, within the meaning of article 3, § 2, of the Constitution of the United States and that a determination of the question involved in such a proceeding, whether favorable to or adverse to the petitioner, was an adjudication which determined the rights of the parties in such a proceeding, and until set aside on appeal or some other method of review, or by direct action to annul the same upon the ground of illegality or fraud in procuring the same, was a bar to another action upon the same facts determined in the prior proceeding.

The right to appeal from an order admitting an alien to citizenship is affirmed by some authorities but denied by others.

"That a judgment or decree admitting an alien to citizenship may be reviewed upon appeal or writ of error from a District Court of the United States, at least, granting the same, is recognized by the Court of Appeals of this Circuit in the following cases: *U. S. v. Ojala*, [C. C. A. 8th Cir. 1910] 182 Fed. 51, 104 C. C. A. 491; *U. S. v. Ness*, [C. C. A. 8th Cir. 1916] 230 Fed. 950, [145 C. C. A. 144], *affirming* [N. D. Ia. 1914] 217 Fed. 169; *U. S. v. Deans*, [C. C. A. 8th Cir. 1916] 230 Fed. 957, [145 C. C. A. 151] *affirming* *In re Deans*, [W. D. Ark. 1913] 208 Fed. 1018." *In re Hartman*, (N. D. Ia. 1916) 232 Fed. 797.

But referring to the question whether the government had the right to appeal from an order admitting an alien to citizenship, the court in *U. S. v. Nopoulos*, (S. D. Ia. 1915) 225 Fed. 656, said: "There are cases holding that the right

of appeal does exist; but, if it were necessary to decide this question, I should have to hold that the right of appeal does not exist."

"The courts have decided that there is no right to review by writ of error the action of a district court in a naturalization proceeding, it not being a 'case' within the act of Congress conferring jurisdiction upon the Circuit Courts of Appeal 'in all cases,' etc. See *U. S. v. Dolla*, 177 Fed. 101, 100 C. C. A. 521 [C. C. A. 5th Cir. 1910, 21 Ann. Cas. 665]; *U. S. v. Neugebauer*, [C. C. A. 3d Cir. 1911] 221 Fed. 938, 137 C. C. A. 508. . . . This court has in several cases had before it upon appeal the action of District Courts in naturalization proceedings. We have never had the question raised in any of them by counsel whether the court had jurisdiction to proceed upon appeal in such cases. The court's jurisdiction was not challenged in any of them, and without benefit of argument we were not disposed to decide the question. And the question is not now before us, and we express no opinion one way or the other concerning it. We have simply called attention to the matter for the purpose of showing that a serious doubt existed in the minds of the profession as to whether the right to review upon either writ of error or upon appeal existed. We may also point out that in the cases in which this court reviewed upon appeal proceedings in naturalization the records disclose that the United States attorney had appeared on behalf of the government in opposition to the applicant's petition at the final hearing in the District Court, and a record had been made of the testimony and proceedings there had. *U. S. v. Cohen*, [C. C. A. 2d Cir. 1910] 179 Fed. 834, 103 C. C. A. 28, 29 L. R. A. (N. S.) 829; *U. S. v. Poslusny*, [C. C. A. 2d Cir. 1910] 179 Fed. 836, 103 C. C. A. 324; *U. S. v. Balsara*, [C. C. A. 2d Cir. 1910] 180 Fed. 694, 103 C. C. A. 660; *Yunghaus v. U. S.*, [C. C. A. 2d Cir. 1914] 218 Fed. 168, 134 C. C. A. 67." *U. S. v. Mulvey*, (C. C. A. 2d Cir. 1916) 232 Fed. 513, 146 C. C. A. 471.

"It is not to be supposed that it was the intention of the said Act [of 1906] to make a reviewable case of every application for naturalization." *State v. Superior Ct.*, (1913) 75 Wash. 239, 134 Pac. 916, Ann. Cas. 1915C 425.

1909 Supp., p. 371, sec. 11.

Appearance of representative of Naturalization Bureau as making proceeding an adversary one.—The mere appearance at the hearing of the agent of the Naturalization Bureau to interrogate the witnesses, without filing any pleading making specific objection to the granting of a certificate or putting in issue any of the averments of the petition, cannot have the

effect of converting the proceeding from an ex parte to an adversary one, in a sense to make the doctrine of res judicata apply in proceedings to cancel the certificate under section 15. *U. S. v. Leles*, (N. D. Cal. 1916) 236 Fed. 784.

The fact that an application for citizenship was heard before a court of competent jurisdiction, in the presence of representatives of the government, who examined witnesses, and were heard by the court in opposition to the order made, does not estop the government from subsequently seeking to set aside an order admitting the applicant to citizenship. *U. S. v. Nopoulos*, (S. D. Ia. 1915) 225 Fed. 656.

In *U. S. v. Mulvey*, (C. C. A. 2d Cir. 1916) 232 Fed. 513, 146 C. C. A. 471, the court said: "In the case at bar a representative of the Bureau of Naturalization had appeared before the District Court when the application for the certificate of citizenship was pending and placed before it the facts as to the applicant's absence in Ireland. The court thought that these facts did not deprive the respondent of his right to be naturalized, inasmuch as he had not lost his residence. After this decision the chief naturalization examiner in New York City requested the United States district attorney to institute this proceeding. It does not affirmatively appear in this record that any law officer of the government was heard in opposition in the proceeding originally had before the District Court, or that he was present or took any part in the proceedings. All that is disclosed is that some one connected with the Bureau of Naturalization was present and was heard in opposition. The representative of the Bureau was not the attorney for the government in the district in which the proceeding took place, and he was not even an attorney. His appearance at such hearings is as *amicus curiae*, to present to the court such facts relative to the personal history of the several applicants as the Bureau's investigations may have disclosed. The order admitting the respondent to citizenship recites no appearance by the government on the hearing, no minutes of the testimony were taken, and no record preserved. Under such circumstances we do not think that the appearance of a representative of the Bureau in the proceedings is to be regarded as an appearance by the United States in the technical sense in which that word is used in judicial proceedings. The United States, therefore, is not so bound by the decree that it is not entitled to proceed by petition to cancel the certificate so issued."

1909 Supp., p. 371, sec. 12.

Fees for copies of original declarations of intention.—A clerk of courts is not by virtue of this section entitled to fees for making, on the direction of the Bureau of

Immigration and Naturalization, triplicate copies of original declarations of intention for naturalization and attaching the seal of the court to the same. *Cross v. U. S.*, (1916) 242 U. S. 4, 37 S. Ct. 5, 61 U. S. (L. ed.) 114, *affirming* (1915) 50 Ct. Cl. 413.

1909 Supp., p. 372, sec. 13.

The purpose of Congress under section 13 was to provide annual compensation to the clerk of the court for his services in naturalization at a maximum of \$3,000 for each fiscal year and this is not affected by R. S. sec. 2687 in CUSTOMS DUTIES, vol. II, p. 597. *Robb v. U. S.*, (C. C. A. 3d Cir. 1916) 233 Fed. 525, 147 C. C. A. 411.

Fees for copies of original declarations of intention.—A clerk of courts is not by virtue of this section entitled to fees for making, on the direction of the Bureau of Immigration and Naturalization, triplicate copies of original declarations of intention for naturalization and attaching the seal of the court to the same. *Cross v. U. S.*, (1916) 242 U. S. 4, 37 S. Ct. 5, 61 U. S. (L. ed.) 114, *affirming* (1915) 50 Ct. Cl. 413.

Construed with R. S. sec. 2687.—This section is in pari materia with R. S. sec. 2687 in CUSTOMS DUTIES, vol. II, p. 597, and, construing the two sections together, a clerk of a court is not entitled to the full maximum sum allowed for fees collected in the naturalization proceedings in any one fiscal year, but is only entitled to retain his pro rata of said maximum sum for the period during which said fees were collected. *Darling v. U. S.*, (1916) 51 Ct. Cl. 100.

Effect of state statutes regulating fees of state officers.—This section "was not intended to and did not control the ownership of the fees retainable by virtue of it by the clerks of the courts of record of this state. It leaves those fees to whatever disposition may be provided by the state law, even if it be true that under the act the clerks are agents of the national government. *Mucrevy v. San Francisco*, 231 U. S. 669, 34 S. Ct. 260, 58 U. S. (L. ed.) 425. We must, therefore, heed the relevant laws of the state." *Price v. Erie County*, (1917) 221 N. Y. 260, 116 N. E. 988.

Controlled by the decision in *Mucrevy v. San Francisco*, (1914) 231 U. S. 669, 34 S. Ct. 260, 58 U. S. (L. ed.) 425 (*affirming* (1910) 15 Cal. App. 11, 113 Pac. 339), it was held in *Alameda County v. Cook*, (1917) 32 Cal. App. 165, 162 Pac. 405, that the county clerk of Alameda county, ex officio clerk of the Superior Court, was not entitled to retain for his own use and benefit one-half of the fees collected by him in naturalization cases, but must pay the same into the treasury of Alameda county.

As stated in *State v. Smith*, (Neb. 1917)

165 N. W. 896, "the Nebraska statute in force when the naturalization fees in controversy were collected did not require the clerk of the District Court to account to the county for any part of them."

In New York the clerk of Erie county and of the courts of record therein was not entitled to retain, for his own use, one-half the fees collected by him in naturalization proceedings, but must pay them to the county treasurer. *Price v. Erie County*, (1917) 221 N. Y. 260, 116 N. E. 988.

1909 Supp., p. 373, sec. 15.

"This is an equitable proceeding (*United States v. Ness*, 230 Fed. 950, 145 C. C. A. 144; *Luria v. United States*, 231 U. S. 9, 27, 28, 34 Sup. Ct. 10, 58 L. Ed. 101; *United States v. Salomon*, [D. C.] 231 Fed. 461; and *Id.*, 231 Fed. 928, 146 C. C. A. 124), and hence mere form, unless jurisdictional, must yield to substance. Citizenship granted by a court of competent jurisdiction after full hearing should not be taken away unless, from the facts presented, it clearly appears that such citizenship was illegally procured and that the applicant therefor was not entitled thereto at the time his petition was filed. A court decree which accords with truth and justice ought not to be annulled, either because of formal irregularities in the proceedings leading up to its rendition, or because it was based upon an incorrect theory of law, or erroneous reasoning as to facts." *U. S. v. Jorgenson*, (W. D. Mich. 1916) 241 Fed. 412.

Grounds for cancellation, in general.—Findings of fact by the court granting a certificate of naturalization will not be reviewed on a petition to cancel a naturalization certificate because illegally procured in that continuous residence for the statutory period was not shown, unless there was fraud or abuse of power by the court making the findings. *U. S. v. Shanahan*, (E. D. Pa. 1916) 232 Fed. 169.

"Illegally procured."—Appearance of the United States, under section 11 of this Act, in opposition to the granting of a petition for naturalization, does not make the order *res judicata* so as to preclude a suit to cancel the order as having been "illegally procured;" because, for instance the petitioner failed to file with the clerk the certificate from the Department of Commerce and Labor as required in section 4, subdivision 2 of this Act. *U. S. v. Ness*, (1917) 245 U. S. 319, 38 S. Ct. 118, 62 U. S. (L. ed.) 321 (*reversing* (C. C. A. 8th Cir. 1916) 230 Fed. 950, 145 C. C. A. 144, Ann. Cas. 1917C 41, which *affirmed* (N. D. Ia. 1914) 217 Fed. 169), holding that "§ 11 and § 15 were designed to afford cumulative protection against fraudulent or illegal naturalization."

False evidence as to character.—A certificate is illegally and fraudulently pro-

cured, within the meaning of this section, when the court is deceived by false evidence as to the good moral character of the applicant. *U. S. v. Raverat*, (D. C. Mont. 1915) 222 Fed. 1018.

Person naturalized under age.—It is not ground for canceling a certificate of citizenship that the person naturalized lacked two months of being of age at the time of the proceedings for naturalization, there being no fraud involved. The age of the applicant is a question of fact and the statute does not prescribe an age qualification for citizenship. *U. S. v. Butikofer*, (D. C. Idaho 1916) 228 Fed. 918.

Absence of jurisdictional facts.—The absence from the record of any of the jurisdictional facts would make the certificate of naturalization unlawful because issued without warrant of law. *U. S. v. Shanahan*, (E. D. Pa. 1916) 232 Fed. 169.

Petitioner not qualified by residence.—A certificate of citizenship may be set aside and canceled where the uncontradicted evidence at the hearing of the petition showed indisputably that the petition was not qualified by residence and citizenship, and that the court or judge who heard the petition and ordered the certificate misapplied the law and the facts. *U. S. v. Ginsberg*, (1917) 243 U. S. 472, 37 S. Ct. 422, 61 U. S. (L. ed.) 853, *reversing*, in effect, (W. D. Mo. 1914) 244 Fed. 209.

Evidence disproving residence continuously for five years in the United States was the ground upon which a certificate of citizenship was canceled in *In re Giovine*, (W. D. N. Y. 1917) 242 Fed. 741.

Witness verifying petition found not credible.—In view of the requirements in paragraph 3 of subdivision 2 of section 4 ("The petition shall also be verified," etc.), and in section 5 of this act, it was ground for cancellation of a certificate of naturalization that the court after the witness whose affidavit with that of one other was attached to and filed with the petition testified on the final hearing that he had not known the petitioner for five years, permitted the substitution of another witness who had made no affidavit to give the requisite testimony, and thereon granted the petition. *U. S. v. Gulliksen*, (C. C. A. 8th Cir. 1917) 244 Fed. 727, 157 C. C. A. 175.

Testimony not taken in proper manner.—A certificate of citizenship is illegally procured if it is obtained upon the testimony of witnesses who were not examined under oath in open court, before the court, and in the presence of the court as required by section 9 nor their testimony taken by deposition in the manner prescribed in section 10. *U. S. v. Leles*, (N. D. Cal. 1915) 227 Fed. 189, *following* *U. S. v. Nisbet*, (W. D. Wash. 1909) 168 Fed. 1005.

Failure to attach certificate to petition.—A certificate of citizenship is not “illegally procured” because the applicant failed to attach to his petition for naturalization a certificate from the Department of Commerce and Labor stating the date, place, and manner of his arrival in the United States. *U. S. v. Ness*, (C. C. A. 8th Cir. 1916) 230 Fed. 950, 145 C. C. A. 144, Ann. Cas. 1917C 41, *affirming* (N. D. Ia. 1914) 217 Fed. 169.

Courts having jurisdiction to cancel.—The cancellation need not be by the court granting the certificate. A certificate granted by a state court may be canceled in a proceeding before a federal court, notwithstanding the two courts are of co-ordinate jurisdiction. *U. S. v. Nisbet*, (W. D. Wash. 1909) 168 Fed. 1005; *U. S. v. Nopoulos*, (S. D. Ia. 1915) 225 Fed. 656; *U. S. v. Griminger*, (N. D. Ohio 1916) 236 Fed. 285.

It is not necessary that a proceeding to cancel be commenced before the federal district judge who entered the order admitting the respondent to citizenship. *U. S. v. Mulvey*, (C. C. A. 2d Cir. 1916) 232 Fed. 513, 146 C. C. A. 471, wherein the court said: “The fact is quite immaterial that in the present case it was instituted before another district judge of the same district exercising co-ordinate jurisdiction.”

Affidavit—“The sole purpose apparently of the affidavit is to furnish an authentic source or means through which the United States attorney of the district may receive information upon which he may rely, of a violation of the statute.” *U. S. v. Leles*, (N. D. Cal. 1915) 227 Fed. 189.

Affidavit on information and belief.—An affidavit is sufficient though based upon information and belief rather than the personal knowledge of the affiant. *U. S. v. Leles*, (N. D. Cal. 1915) 227 Fed. 189.

Evidence—Presumption as to residence and character.—It is a familiar rule of law that residence and character once proved are presumed to continue in the absence of countervailing evidence, and the ordinary presumptions and rules of evidence are not reversed in suits to cancel certificates of citizenship. *U. S. v. Deans*, (C. C. A. 8th Cir. 1916) 230 Fed. 957, 145 C. C. A. 151, *affirming* (W. D. Ark. 1913) 208 Fed. 1018.

1909 Supp., p. 374, sec. 21.

Fees for copies of original declarations of intention.—A clerk of courts is not entitled to fees for making on the direction of the Bureau of Immigration and Naturalization triplicate copies of original declarations of intention for naturalization and attaching the seal of the court

to the same notwithstanding R. S. sec. 828, in *JUDICIAL OFFICERS*, vol. IV, p. 95, which might otherwise give him a right to such fees. *Cross v. U. S.*, (1916) 242 U. S. 4, 37 S. Ct. 5, 61 U. S. (L. ed.) 114, *affirming* (1915) 50 Ct. Cl. 413.

1909 Supp., p. 379, sec. 30.

History.—See *In re Mallari*, (D. C. Mass. 1916) 239 Fed. 416.

“It has been the policy of Congress to facilitate the admission to American citizenship of such of the inhabitants of our insular possessions as under our general policy are racially qualified therefor.” *In re Giralde*, (D. C. Md. 1915) 226 Fed. 826.

The racial restrictions of section 2169 in volume V, page 207, apply only to aliens and not to persons specified in this section. *In re Mallari*, (D. C. Mass. 1916) 239 Fed. 416.

In view of the debates in Congress and the legislative history of this section 30, R. S. sec. 2169, vol. V, p. 207, is to be regarded as so modified as to admit to citizenship a Filipino otherwise qualified for citizenship. *In re Bantista*, (N. D. Cal. 1917) 245 Fed. 765, holding, however, that only natural-born Filipinos are thus eligible, and that an alien not born in the Philippine Islands is not eligible unless under R. S. sec. 2169.

1912 Supp., p. 277, sec. 3.

The “five years” referred to in the latter part of this proviso has been held to mean five years before the hearing. *In re Ross*, (E. D. Pa. 1915) 223 Fed. 366; *In re Fleury*, (E. D. N. Y. 1915) 223 Fed. 803. But see *contra In re Urdang*, (E. D. Ky. 1913) 212 Fed. 557; *In re Peters*, (W. D. Wash. 1914) 213 Fed. 541; *In re Horecsny*, (D. C. Idaho 1916) 238 Fed. 446.

A certificate of citizenship cannot legally be granted if the petitioner has not continuously resided in the United States for a period of five years. *In re Giovine*, (W. D. N. Y. 1917) 242 Fed. 741.

“Misinformation” in *U. S. v. Meyer*, (C. C. A. 2d Cir. 1917) 241 Fed. 305, 154 C. C. A. 185, Ann. Cas. 1918C 704, was held to be such as to bring the applicant within the benefit of the second proviso in this paragraph.

An applicant under the second proviso must have received the “misinformation” from a source which in the ordinary course of events might be considered authentic. *In re Mondelli*, (E. D. Ky. 1915) 228 Fed. 920. See also *U. S. v. Nopoulos*, (S. D. Ia. 1915) 225 Fed. 656, where a certificate of citizenship was canceled.

NAVY

Vol. V, p. 259, sec. 1386.

Appointment.—The appointing power cannot attach conditions which have the effect of depriving an appointee as paymaster's clerk of what the law allows him to receive. *Katzer v. U. S.*, (1917) 52 Ct. Cl. 32.

Title of paymaster's clerk changed to pay clerk, see NAVY, 1916 Supp., p. 177, foot of page.

Vol. V, p. 285, sec. 1462.

Effect of section.—This section states the general rule of statutes as to duty and pay of naval officers. *White v. U. S.*, (1916) 239 U. S. 608, 36 S. Ct. 224, 60 U. S. (L. ed.) 464, *affirming* (1914) 49 Ct. Cl. 702.

Scope of section.—Officers on the active list only are affected by this section. *White v. U. S.*, (1916) 239 U. S. 608, 36 S. Ct. 224, 60 U. S. (L. ed.) 464, *affirming* (1914) 49 Ct. Cl. 702.

Vol. V, p. 309. [Act of March 2, 1895.]

Jurisdiction on the court of claims is not conferred by this Act, nor has that court jurisdiction under the general grant of jurisdiction of claims "founded upon any law of Congress." *Harllee v. U. S.*, (1916) 51 Ct. Cl. 342.

Vol. V, p. 322, sec. 13.

Appointment from civil life in third proviso.—An enlisted man, having obtained his discharge, with the expectation and practical assurance of being appointed assistant paymaster as a promotion, for which he had taken an examination, was appointed assistant paymaster two days after his resignation, and was thus appointed from civil life, according to the letter of the law. But according to the doctrine of *U. S. v. Alger*, 151 U. S. 362, 14 S. Ct. 346, 38 U. S. (L. ed.) 192, he was not entitled to be so regarded, and the Comptroller of the Treasury eventually so ruled. Meanwhile he had received the increased pay given by the terms of the statute to appointees from civil life, and his vouchers therefor were duly approved. It was held that the government was not entitled to be repaid the sum paid him in excess of that to which the Comptroller finally determined was his due. *U. S. v. United States Fidelity, etc., Co.*, (E. D. N. Y. 1917) 244 Fed. 310.

Vol. V, p. 328. [Mileage or actual expenses, when allowed.]

This provision did not operate to repeal R. S. sec. 1566, in volume V, p. 327, as to

the provision that no officer shall be paid mileage except for travel actually performed, at his own expense and under orders. *Katzer v. U. S.*, (1917) 52 Ct. Cl. 32.

"Officer of the navy" does not include a paymaster's clerk. *Ashton v. U. S.*, (1916) 51 Ct. Cl. 65.

Vol. V, p. 350, sec. 1621.

On detached service with the army.—A private serving in the marine corps, while his brigade was detached for service with the army by order of the President, was charged with having committed an act which was an offense both by "the rules and articles of war prescribed for the government of the army" and by "the laws and regulations established for the government of the navy." For this he was placed under guard by military order. The next day the brigade to which he belonged was by executive order withdrawn from the detached service of the army. Subsequently he was brought before a naval court martial for trial and was tried, convicted and sentenced for an offense against the laws and regulations of the navy. When arraigned for trial he entered a plea to the jurisdiction of the court, based upon the fact that at the time the offense was charged to have been committed, he, a private in a brigade of the marine corps, was serving with the army on detached service and that as a matter of law the marine corps when on such service is not subject to the laws and regulations of the navy. The plea was overruled and the case came before the District Court as in effect a case stated to have section 1621 construed. The court held that there was nothing to be added to the clear answer given by the language of the statute itself and that the relator was not subject to the laws and regulations of the navy, and that a court established by these laws was without authority of law to impose or enforce the sentence pronounced. *U. S. v. Walker*, (E. D. Pa. 1915) 225 Fed. 673.

1909 Supp., p. 390, sec. 1. [Act of May 13, 1908.]

Aids to rear-admirals.—A lieutenant commander is not entitled to additional pay on account of services as aid to a rear-admiral. *Knox v. U. S.*, (1917) 52 Ct. Cl. 22.

1912 Supp., p. 280, sec. 1.

"Holding appointment," etc.—A nominee as paymaster's clerk having reported to the Mare Island navy yard as ordered, and being found qualified, accepted the

appointment and executed the oath of office, was from that date "holding appointment in accordance with law" as expressed in this provision. *Katzer v. U. S.*, (1917) 52 Ct. Cl. 32, holding also that the appointing power could not lawfully attach conditions to the appointment so as to have the effect of depriving the appointee of what the law authorized him to receive.

1914 Supp., p. 298. [*Act of March 4, 1913, ch. 148.*]

A paymaster's clerk commissioned a chief pay clerk under the Act of March 3, 1915, 1916 Supp., pp. 177, 178, was not "advanced in grade or rank pursuant to law" within the meaning of this provision in the Act of March 4, 1913. *Seifert v. U. S.*, (1917) 52 Ct. Cl. 40.

Commission; departmental practice.—Where by the deliberate action of the administrative department a new commission is issued to correct a prior commission under the ruling of the court in *Toulon v. U. S.*, (1916) 51 Ct. Cl. 87, recognition will be given to the practice of the department in reckoning the date from that of appointment rather than from the time of actual service, where there is no statute which prohibits said practice. *Toulon v. U. S.*, (1917) 52 Ct. Cl. 333.

1916 Supp., p. 167, sec. 1. [*Alien in navy or marine corps.*]

Half-breed Filipino.—One whose father was a Spaniard and his mother a Filipino is not entitled to the benefit of this pro-

vision. *In re Rados*, (E. D. N. Y. 1917) 241 Fed. 686.

Filipinos were held not included within the provisions of the Act of July 26, 1894. They fall within the provisions of this section 30. *In re Mallari*, (D. C. Mass. 1906) 239 Fed. 416.

A Filipino born in the Philippine Islands and whose permanent allegiance was transferred to the United States by force of the treaty with Spain is an "alien" within the meaning of that term in this Act and entitled to its benefits. *In re Bautista*, (N. D. Cal. 1917) 245 Fed. 765.

Porto Rican.—In the case of *In re Giralde*, (D. C. Md. 1915) 226 Fed. 826, it was held that a native of Porto Rico was entitled to the provisions of the section.

1916 Supp., p. 177. [*Paymaster's clerk, etc.*]

This provision "radically changed the method theretofore existing for the selection of paymasters' clerks and inaugurated a system designed to be complete in itself for the creation and selection of acting pay clerks, pay clerks, and chief pay clerks." *Seifert v. U. S.*, (1917) 52 Ct. Cl. 40.

1916 Supp., p. 178. [*Chief pay clerks, etc.*]

A paymaster's clerk commissioned a chief pay clerk under this Act was not "advanced in grade or rank pursuant to law" within the meaning of the provision in the Act of March 4, 1913, 1914 Supp., p. 298.

NEUTRALITY

Vol. V, p. 357, sec. 5282.

On a trial for violation of this section the court has no power to direct the jury to return a verdict of guilty, pursuant to an agreed statement of facts between the government and the defendant, regardless of the jury's own view respecting the proper conclusion to be drawn from the facts agreed upon. *Blair v. U. S.*, (C. C. A. 9th Cir. 1917) 241 Fed. 217, 154 C. C. A. 137, reversing for that reason a judgment of conviction in (N. D. Cal. 1915) 228 Fed. 77, and holding that the constitutional right to trial by jury in a criminal case cannot be waived.

On the trial of an indictment for conspiracy to violate this statute the court said: "It must be observed that the prohibition of the statute is not aimed at the hiring or retaining by or of citizens of this country alone, but at the

hiring or retaining by any person whomsoever of any other person. It is to be observed, further, that the hiring or retaining must be to go without the limits of this country with intent to enlist. The fact that other countries, having laws for compulsory military service, have assisted their subjects in this country to return to their native land, is a false quantity here, and one with which we have nothing to do. It throws no light upon the questions which we are to consider. The case on trial must be determined upon its own particular facts, without regard to what has been done either here or elsewhere by persons not included in the present indictment. Nor is there here involved any question as to the right of individuals to go from this country either singly or in groups to another country with intent there to enlist. The sole question here is: Do the facts be-

fore us show a conspiracy on the part of defendants to violate the statute which we have been considering?" *U. S. v. Blair-Murdock Co.*, (N. D. Cal. 1915) 228 Fed. 77, *per* Dooling, J.

Evidence.—In *U. S. v. Blair-Murdock Co.*, (N. D. Cal. 1915) 228 Fed. 77, an indictment for conspiracy to violate this section, the salient facts of the case as recited by the court, were held sufficient to demand conviction for conspiracy to secure men to return to Great Britain and enlist, although none of the defendants expressly said in words to any of the men that they should enlist in the service of Great Britain as soldiers, sailors, or marines, and although the defendants may have believed they were acting within the law.

Vol. V, p. 358, sec. 5283.

Political recognition of the objects of the hostilities mentioned in the statutes is not required as a condition precedent to a violation of the Act. *The Lucy H.*, (N. D. Fla. 1916) 235 Fed. 610.

Vol. V, p. 366, sec. 5286.

Nations to which applicable.—It would be an offense under this section to prepare a military expedition to be carried on against the Carranza government in Mexico, though his government had not been recognized as the legitimate government of Mexico. *De Drozeo v. U. S.*, (C. C. A. 5th Cir. 1916) 237 Fed. 1008, 151 C. C. A. 70.

Expedition and enterprise defined.—The sending out of a spy or spies to the dominions of a country with which we are at peace comes within the prohibition of this statute; for the words "military enterprise," while including a military expedition, have a wider scope than the latter. *U. S. v. Sander*, (S. D. N. Y. 1917) 241 Fed. 417.

Elements of military expedition.—"A most completely organized military detachment of soldiers marching from a neutral into a belligerent country, simply to march in and then out again, without threat or purpose of attack in any direction upon the belligerent, or upon any of its institutions, while it might impinge upon international neutrality regulations, would not, it is believed, contravene the statute; nor would a wholly unorganized and irresponsible mob of persons going

from a neutral into a belligerent state, with a purpose of committing depredations upon the latter's military institutions, alone constitute an infringement of the statute. But if there be a preconcerted plan of operations, with leadership, and a co-ordination of men and arms and munitions and other means for attacking the armies or navies of the belligerent, or crippling or destroying her military institutions, set on foot for the purpose and with the intention of so attacking the belligerent nation in either aspect, and thereby to render aid and assistance to the enemy, the military enterprise or expedition contemplated by the statute would seem to be complete." *U. S. v. Tauscher*, (S. D. N. Y. 1916) 233 Fed. 597.

Elements of military enterprise.—"Neither this statute nor any other declares what is meant therein by the words 'military enterprise', nor what would be required to constitute such an enterprise, so that in giving effect to the statute the court must determine from other sources what Congress meant when it used these words." *U. S. v. Bopp*, (N. D. Cal. 1916) 230 Fed. 723, sustaining a demurrer to an indictment for conspiracy to violate this section, as embodied in PENAL LAWS, § 13, 1909 Supp., p. 460, and holding that, while a purpose to destroy tunnels, railroads, bridges, trains, and ships which were engaged in the transportation of munitions of war might be the aim of a military enterprise, it is not necessarily so and might be directed only against the various companies owning such tunnels, railroads, bridges, trains, and ships.

Number of men material.—"This section does not require that the expedition should have actually set out or any particular number of men, the crime being completed by the organization only. *U. S. v. Ybanez*, 53 Fed. 536." *U. S. v. Chakraberty*, (S. D. N. Y. 1917) 244 Fed. 287.

Sufficiency of indictment.—It is sufficient to charge in the indictment that the defendants, by an act the character of which is of a warlike nature, inaugurated and set on foot an enterprise for the furtherance of a military or warlike purpose against a kingdom or country with which the United States are at peace." *U. S. v. Chakraberty*, (S. D. N. Y. 1917) 244 Fed. 287.

OBSCENITY

Vol. X, p. 247. [*Act of Feb. 8, 1905.*]

See notes to PENAL LAWS, 1909 Supp., p. 474, § 245. *post*, this volume, p. 1362.

OBSTRUCTING JUSTICE

Vol. V, p. 388, sec. 5399.

See notes to PENAL LAWS, 1909 Supp., p. 440, § 135, *post*, this volume, p. 1355.

Vol. V, p. 390, sec. 5404

See notes to PENAL LAWS, 1909 Supp., p. 440, § 135, *post*, this volume, p. 1355.

OFFICERS OF MERCHANT VESSELS

Vol. V, p. 402, sec. 4450.

Notice and hearing are conditions precedent to the revocation of a license under this section. *Joyce v. Bulger*, (W. D. Wash. 1916) 240 Fed. 817; *Fredenberg v. Whitney*, (W. D. Wash. 1917) 240 Fed. 819.

Vol. V, p. 403, sec. 4452.

Who may appeal.—The right of appeal is given only to an interested party, and a stranger to the proceeding has no standing. *Joyce v. Bulger*, (W. D. Wash. 1916) 240 Fed. 817.

PATENTS

Vol. V, p. 417, sec. 4883.

Nature of right.—*Eminent domain*.—Rights secured under the grant of letters patent by the United States are properly protected by the constitutional guaranties and therefore not subject to be appropriated, even for public use, without adequate compensation. *William Cramp, etc., Ship, etc., Bldg. Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, *affirmed* (C. C. A. 3d Cir. 1917) 238 Fed. 564, 151 C. C. A. 500.

Price restrictions.—The monopoly conferred by the Patent Law does not give the manufacturers of a patented article the right, in derogation of the general law, to fix by contract between its general sales agent and purchasing dealers the price at which such articles shall be resold, and an attempt to enforce the apparent obligations of such contract under the guise of a patent infringement is not embraced within the remedies given for the protection of the rights which the Patent Law confers. *Boston Store v. American Graphophone Co.*, (1918) 246 U. S. 8, 38 S. Ct. 257, 62 U. S. (L. ed.) 551.

Vol. V, p. 421, sec. 4886.

I. Who may obtain patents.

III. Invention.

• V. Novelty and anticipation.

I. WHO MAY OBTAIN PATENTS (p. 421)

First inventor defined.—*The man who first reduces an invention to practice* is prima facie the first and true inventor, but the man who first conceives and in a mental sense first invents a machine,

art, or composition of matter may date his patentable invention back to the time of its conception if he connects the conception with its reduction to practice by reasonable diligence on his part, so that they are substantially one continuous act. *Otis Elevator Co. v. Interborough Rapid Transit Co.*, (C. C. A. 2d Cir. 1915) 222 Fed. 501, 138 C. C. A. 97; *Evans v. Associated Automatic Sprinkler Co.*, (C. C. A. 3d Cir. 1917) 241 Fed. 252, 154 C. C. A. 172, *affirming* (E. D. Pa. 1916) 229 Fed. 1007.

Rules for determining priority.—When two patents for the same invention have been issued to independent inventors, the dates of their respective inventions are determined by (1) the dates of the patents; (2) the dates of the application, provided the application sufficiently describes the invention; (3) the dates of actual reduction to practice (4) the dates of conception, with this qualification: That if either patentee seeks to carry the date of his invention back to the date of his conception, he must show reasonable diligence in adapting and perfecting his invention, either by actual reduction to practice or by filing his application. *Evans v. Associated Automatic Sprinkler Co.*, (C. C. A. 3d Cir. 1917) 241 Fed. 252, 154 C. C. A. 172, *affirming* (E. D. Pa. 1916) 229 Fed. 1007.

It is established as a rule of evidence that in a contest between rival inventors for priority of invention, where both have reduced their conceptions to practice, the burden is on the second reducer to practice to show his prior conception and to establish the connection between his conception and its reduction to practice by proof of due diligence. *Evans v. Associated Automatic Sprinkler Co.*, (C. C. A.

3d Cir. 1917) 241 Fed. 252, 154 C. C. A. 172, *affirming* (E. D. Pa. 1916) 229 Fed. 1007.

III. INVENTION (p. 430)

What constitutes invention.—Slight variations claimed for a patent for improvements in railroad tie plates, from prior forms of such plates, do not constitute patentable invention. *Railroad Supply Co. v. Elyria Iron, etc., Co.*, (1917) 244 U. S. 285, 37 S. Ct. 502, 61 U. S. (L. ed.) 1136, *affirming* (C. C. A. 6th Cir. 1914) 213 Fed. 789, 130 C. C. A. 447.

Change of size or proportion.—In *Edison v. Allen's American Portland Cement Works*, (C. C. A. 2d Cir. 1914) 219 Fed. 895, 135 C. C. A. 559, the court held that a mere matter of construction such as the elongation of a machine, the only result of the change being to produce a larger output, did not involve patentable invention. And to a like effect see *Adrian Wire Fence Co. v. United Fence Co.*, (C. C. A. 6th Cir. 1915) 223 Fed. 342, 138 C. C. A. 604, wherein it was held that a mere carrying forward of the original thought, a change only in form, proportions, or degree, doing the same thing in the same way, by substantially the same means, with better results, is not such an invention as will sustain a patent.

Equivalents.—For a patent (acetylene lamp) held to exhibit meritorious invention and entitled to invoke the doctrine of equivalents, see *Abercrombie, etc., Co. v. Baldwin*, (1917) 245 U. S. 198, 38 S. Ct. 104, 62 U. S. (L. ed.) 240.

Combination.—For a case in which the bringing together of elements confessedly old, for a gearing device for use in operating power washing machines and wringers, was held not to amount to a patentable combination, see *Grinnell Washing Mach. Co. v. E. E. Johnson Co.*, (1918) 247 U. S. 426, 38 S. Ct. 547, 62 U. S. (L. ed.) 1196.

V. NOVELTY AND ANTICIPATION (p. 443)

New use.—If an inventor finds a chemical substance devoted to a particular use and conceives the idea of applying it to a new purpose, and on experiment discovers that the substance must be treated in a particular way to suit his purpose, which method of treatment is essential to his end, but of less importance in obtaining the prior art results, it is apparent that he may be regarded as a real inventor, even though he selects a specific treatment in an occupied field. If he were making only a paste, as others had done, it might not be invention to select part of the old field of experiment, although he might thus produce an improved paste. But he discovers a novel and valuable use for the old product, which he modifies to suit the new purpose. In connection with his new and

useful result, and as against a person who produces the old product as modified, and who sells it for the new purpose, he is an inventor, entitled not only to restrain such sale, but also the manufacture or use of the product. *Perkins Glue Co. v. Solva Waterproof Glue Co.*, (N. D. Ill. 1915) 223 Fed. 792.

New element in old combination.—Patentable novelty is sometimes found in discovering what is the difficulty with an existing structure and what change in its elements will correct the difficulty, even though the means for introducing that element into the combination are old and their adaptation to the new purpose involves no patentable novelty. *Miehle Printing Press, etc., Co. v. Whitlock Printing Press, etc., Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 647, 139 C. C. A. 201.

Patent as evidence of novelty.—The grant of letters patent is *prima facie* evidence that the patentee is the first inventor of the device in issue and of its novelty. *Toledo Metal Wheel Co. v. Foyer*, (C. C. A. 6th Cir. 1915) 223 Fed. 350, 138 C. C. A. 612.

Vol. V, p. 472, sec. 4888.

III. CLAIMS (p. 478)

Rights determined by claim.—The inventor can, of course, use any language he wishes in describing his invention and in stating his claims. Having done so, however, he must abide by the phraseology chosen. It is then too late to reconstruct his claims by adding to or subtracting from the language used. This rule may result in hardship in many cases, but a contrary rule would work a far greater injustice and would enable the patentee to hold as infringers those who have invested their capital in what they supposed, relying on the plain language of the patent, to be a perfectly legitimate business. When the language of the claims of a patent is clear and distinct, the patentee is bound by it. *Evans v. Hall Printing Press Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 539, 139 C. C. A. 129.

Construction of claims for improvements.—In *Railroad Supply Co. v. Elyria Iron, etc., Co.*, 244 U. S. 285, 37 S. Ct. 502, 61 U. S. (L. ed.) 1136, *affirming* (C. C. A. 6th Cir. 1914) 213 Fed. 789, 130 C. C. A. 447, it was held that the state of the prior art required that designated patents for improvements in railroad tie plates, be limited strictly to the forms described in the claims.

Vol. V, p. 499, sec. 4904.

Duty to declare interference.—The refusal of the Commissioner of Patents to declare an interference, where the patent office is informed, through the admission of an applicant, that the invention shown

in his application was conceived on a date subsequent to the filing date upon an application of another person for the same invention is justified by the provisions of this section, since the duty to declare an interference imposed by this statute and by the rules of the patent office, cannot be deemed imperatively to arise merely because of an asserted antagonism between the applications, but there must be precedent and supervising judgment of the commissioner. *Ewing v. U. S.*, (1917) 244 U. S. 1, 37 S. Ct. 494, 61 U. S. (L. ed.) 955, *reversing* (1916) 45 App. Cas. (D. C.) 185.

Vol. V, p. 531, sec. 4898.

III. ASSIGNMENTS

3. *Form and Requisites* (p. 536)

Acknowledgment.—All that this section requires is an acknowledgment good at common law, not one which shall conform to some special regulations as to acknowledgments which may be from time to time enacted in one or other of the different states. *Hildreth v. Auberback*, (C. C. A. 2d Cir. 1915) 223 Fed. 651, 139 C. C. A. 205, *affirming* (S. D. N. Y. 1914) 223 Fed. 545. The acknowledgment of an assignment of a patent relates to the date of the assignment. *Murray Co. v. Continental Gin Co.*, (C. C. A. 3d Cir. 1907) 149 Fed. 989, 79 C. C. A. 499.

Vol. V, p. 552, sec. 4919.

II. WHO LIABLE FOR INFRINGEMENT (p. 557)

United States — *Infringement by officer.*

—Where an officer of the United States in dealing with a subject within the scope of his authority, infringes patent rights by a taking or use of property for the benefit of the United States under circumstances not justifying the implication of a contract, the only redress of the owner is against the officer. *William Cramp, etc., Ship, etc., Bldg. Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, *affirmed*, (C. C. A. 3d Cir. 1917) 238 Fed. 564, 151 C. C. A. 500.

Liability on implied contract — *Consent to suit.*—The owner of a patent right appropriated for the benefit of the United States by an officer of the United States, acting within the scope of his authority, and having knowledge of the patent right and its validity, with the consent of the owner, express or implied, upon the conception that compensation will be thereafter provided, may, under the statute law of the United States permitting suits against the United States on contracts, express or implied, recover, by way of implied contract, the compensation which may be rightly exacted because of such

taking. *William Cramp, etc., Ship, etc., Bldg. Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, *affirmed* (C. C. A. 3d Cir. 1917) 238 Fed. 564, 151 C. C. A. 500.

Vol. V, p. 566. [*Act of March 3, 1897.*]

Regular and established place of business.—An allegation that defendant citizens and residents of Indiana "have jointly and severally infringed" the letters patent sued on "within the eastern district of Pennsylvania" and that all of the defendants "are now doing business under the name or style of Wall & Ochs at 1716 Chestnut Street, in said city of Philadelphia" falls short of an allegation that the defendants "have a regular and established place of business" in that city. *Scheuerle v. Onepiece Bifocal Lens Co.*, (E. D. Pa. 1917) 241 Fed. 270.

A return of service was insufficient to give the court jurisdiction which averred service upon the defendants by serving certain named persons, without stating that they were agents engaged in conducting the business, and the bill did not allege them to be such. *Scheuerle v. Onepiece Bifocal Lens Co.*, (E. D. Pa. 1917) 241 Fed. 270.

Consent of the parties cannot confer jurisdiction on a federal court. "Any jurisdictional fact prescribed by the statute is absolutely essential, and cannot be waived, and the want of it may be raised at any stage of the cause." *U. S. Envelope Co. v. Transo Paper Co.*, (D. C. Conn. 1916) 229 Fed. 576.

But it has been said that, construing this provision in connection with Judicial Code, § 50, 1912 Supp., p. 153, a nonresident corporation can come involuntarily into a district and accept service or can voluntarily appear, if it has been named as a party on the record, and by appearing waives the question of jurisdiction of the person and submits itself to the jurisdiction of the court. *Dicks Press Guard Mfg. Co. v. Bowen*, (N. D. N. Y. 1916) 229 Fed. 193.

"In suits for infringement of letters patent against a nonresident corporation, both the fact that the defendant has committed acts of infringement and has a regular and established place of business must concur; otherwise, the court is without jurisdiction." *U. S. Envelope Co. v. Transo Paper Co.*, (D. C. Conn. 1916) 229 Fed. 576.

Vol. V, p. 567, sec. 4920.

I. PLEADING AND PROOF IN GENERAL (p. 568)

Defenses — *Reissued patent.*—An infringer who entered the field when the

validity and scope of the infringed patent were still unquestioned and after an extensive market for the patented article had been created, cannot escape accountability for its infringing acts subsequent to the reissue of the patent on the theory that rights had been acquired during the seven years intervening between the issue of the original patent and the application for the reissue, though by the reissue the patentee loses all in the way of an accounting under the original patent. *Abercrombie, etc., Co. v. Baldwin*, (1917) 245 U. S. 198, 38 S. Ct. 104, 62 U. S. (L. ed.) 240.

Question for court.—Where there is no dispute or controversy on the facts as to

the meaning of the claims or regarding the disclosure of the prior art, the question becomes one of law to be determined by the court. *Prepayment Car Sales Co. v. Orange County Traction Co.*, (C. C. A. 2d Cir. 1915) 221 Fed. 939, 137 C. C. A. 509. So it is well settled that when the validity of a patent is to be determined and its claim construed by reference to prior patents, about the dates and authenticity of which there is no controversy, the trial judge will usually construe those documents as he would other documents; his doing so does not invade the province of the jury. *Brothers v. Lidgerwood Mfg. Co.*, (C. C. A. 2d Cir. 1915) 223 Fed. 359, 138 C. C. A. 460.

PENAL LAWS.

1909 Supp., p. 407, sec. 10.

See notes to NEUTRALITY, vol. V, p. 357, R. S. sec. 5282, *ante*, p. 1348.

1909 Supp., p. 408, sec. 11.

See notes to NEUTRALITY, vol. V, p. 358, R. S. sec. 5283, *ante*, p. 1349.

1909 Supp., p. 408, sec. 13.

See notes to NEUTRALITY, vol. V, p. 366, R. S. sec. 5283, *ante*, p. 1349.

1909 Supp., p. 410, sec. 19.

See notes to CIVIL RIGHTS, vol. I, p. 802, R. S. sec. 5508, *ante*, p. 1168.

1909 Supp., p. 413, sec. 29.

See notes to COUNTERFEITING AND FORGING, vol. II, p. 303, R. S. sec. 5421, *ante*, p. 1186.

1909 Supp., p. 414, sec. 32.

Personating congressman.—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, affirming a conviction for violation of this section, the court, per Mr. Chief Justice White, said: "It is insisted that no offense under the statute was stated in the indictment because a member of the House of Representatives of the United States is not an officer acting under the authority of the United States within the meaning of the provision of the Penal Code upon which the indictment was based. This contention is supported by reference to what is assumed to be the significance in one or more provisions of the Constitution of the words 'civil officers,' and reliance is especially placed upon the ruling made at an early day in the *Blount Case*, Whart. St. Tr. p. 200, that a Senator of the United States was not a civil officer

subject to impeachment within the meaning of § 4 of article 2 of the Constitution. But, as previously held in sustaining the motion to dismiss the direct writ of error, the issue here is not a constitutional one, but who is an officer acting under the authority of the United States within the provisions of the section of the Penal Code under consideration? And that question must be solved by the text of the provision, not shutting out as an instrument of interpretation proper light which may be afforded by the Constitution, and not forgetting that a penal statute is not to be enlarged by interpretation, but also not unmindful of the fact that a statute, because it is penal, is not to be narrowed by construction so as to fail to give full effect to its plain terms as made manifest by its text and its context. *U. S. v. Hartwell*, [1868] 6 Wall. 385, 395, 18 U. S. (L. ed.) 830, 832; *U. S. v. Corbett*, [1900] 215 U. S. 233, 242, 243, 30 S. Ct. 81, 54 U. S. (L. ed.) 173, 175, 176."

"Under the authority of the United States."—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, affirming a conviction for violation of this section, it was urged by the defendant that no offense was charged in the indictment because it was not charged that, in pretending to be an officer, the defendant did an act which he would have been authorized to do under the authority of the United States had he possessed the official capacity which he assumed to have; in other words, that the first clause of the section prohibits the falsely assuming or pretending to be an officer with intent to defraud, and, as such officer, taking upon himself to act under the authority of the United States,—that is, to do an authorized act. But the court overruled that contention.

Venue of federal prosecution.—Where the false personation is by telephone the offense may be tried in the District Court of the district of the hearer. *Lamar v. U. S.*, (1916) 240 U. S. 60, 36 S. Ct. 255, 60 U. S. (L. ed.) 526.

Indictment—*Personation of congressman.*—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, an objection to an indictment for falsely personating an officer acting under the authority of the United States with intent to defraud, etc., that it failed to describe the circumstances of the offense was held to be untenable in the appellate court after conviction, where said indictment clearly charged the illegal acts complained of and the requisite fraudulent intent, stated the date and place of the commission of the acts charged, and gave the name and official character of the officer whom the accused was charged with having falsely personated, and there was not the slightest suggestion of a want of knowledge of the crime charged or of any surprise concerning the same, nor any intimation that any request was made for a bill of particulars concerning the details of the offense charged. "Under this situation," said the court, "we think that the case is clearly covered by § 1025 Revised Statutes" in *CRIMES AND OFFENSES*, vol. II, p. 340.

Evidence.—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, the court, after stating that it had made a close scrutiny of the record, expressed the opinion that it was sufficient to justify submission thereof to the jury, and a conviction was sustained upon an indictment for false personation of an officer acting under the authority of the United States, with intent to defraud, etc.

1909 Supp., p. 414, sec. 35.

Evidence—*Purchase or pledge.*—In *Bolland v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 529, 151 C. C. A. 465, Ann. Cas. 1918B 520, where defendant was convicted on an indictment charging that he knowingly received in pledge an automatic pistol, the property of the United States, the government proved that the pistol was issued by the quartermaster sergeant to one Cartlidge, a member of the United States army, and was found in the grocery store of the defendant, which was near the government reservation where the soldier's company was stationed; and a witness testified that the defendant confessed to receiving the pistol in pledge from a soldier. It was held that the court properly denied a motion of defendant for the direction of a verdict of acquittal at the close of the government's evidence, based upon the contention that the corpus delicti of the

crime had not been established by evidence independent of the confession of the accused, since the evidence above stated tended to corroborate the confession, and was such as to warrant the jury in inferring that the defendant knew that Cartlidge was a soldier, and also that the pistol was government property.

In *Bolland v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 529, 151 C. C. A. 465, Ann. Cas. 1918B 520, affirming conviction of a defendant charged with receiving from a soldier a pistol, the property of the United States, the fact that the pistol was found in the possession of the defendant, who was not a soldier or officer of the United States, was held to be presumptive evidence that the same had been pledged to the defendant, in view of the presumption expressly created by the terms of R. S. sec. 1242 in *WAR DEPARTMENT AND MILITARY ESTABLISHMENT*, vol. VII, p. 1017, and of R. S. sec. 3748 in *PUBLIC PROPERTY, BUILDINGS, AND GROUNDS*, vol. VI, p. 711.

1909 Supp., p. 415, sec. 36.

See notes to *LARCENY*, vol. IV, p. 790, sec. 5439, *ante*, p. 1327.

1909 Supp., p. 415, sec. 37.

See notes to *CONSPIRACY*, vol. II, p. 247, sec. 5440, *ante*, p. 1173.

1909 Supp., p. 418, sec. 47.

See notes to *LARCENY*, vol. IV, p. 790, sec. 1 [Act of March 3, 1875], *ante*, p. 1328.

1909 Supp., p. 419, sec. 51.

Civil action by the United States.—In *Union Naval Stores Co. v. U. S.*, (1916) 240 U. S. 284, 36 S. Ct. 308, 60 U. S. (L. ed.) 644, affirming judgment in (C. C. A. 5th Cir. 1913) 202 Fed. 491, 123 C. C. A. 1, for the United States in an action for conversion of turpentine and rosin, the court said: "There was no error in charging that 'the boxing of trees by a settler on public land covered by an unperfected homestead entry, or by any person who knew it was public land (which an unperfected homestead entry is), and the extracting of crude turpentine therefrom, constitutes in law an intentional, wilful trespass, although he may have acted without knowledge of the illegality of the act, and that from such persons the United States are entitled to recover the value of the product manufactured from such crude turpentine by the settler, or from any person into whose possession the same may have passed.' This refers of course, as other parts of the charge clearly show, to a manufacture by Rayford, who was himself the trespasser."

1909 Supp., p. 427, sec. 83.

Congress has constitutional power to enact this section prohibiting money contributions to be made by certain corporations in connection with any election at which, among others, representatives in Congress are to be voted for. *U. S. v. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

"If it should be held that Congress exceeded its power in including, among others, elections in which Presidential and Vice Presidential electors are to be voted for, on the ground that they are officers of the state and not of the federal government, that would not, in my opinion, invalidate the act, except as to that particular provision." *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

"The words 'money contributions' are not vague and uncertain, but, on the contrary, their meaning is plain and their purpose as used in the act unmistakable. Whether, in any given case, an expenditure by a corporation shall be construed as 'a money contribution in connection with any election,' within the spirit, intent, and meaning of the act of Congress, may become a question for the court or jury in the light of all the circumstances of the case." *U. S. v. U. S. Brewers' Ass'n*, (W. D. Pa. 1916) 239 Fed. 163.

1909 Supp., p. 431, sec. 99.

See notes to MONEY PAID INTO COURT, vol. V, p. 71, sec. 5504, *ante*, p. 1331.

1909 Supp., p. 437, sec. 125.

See notes to PERJURY, vol. V, p. 701, sec. 5392, *post*, this volume, p. 1363.

1909 Supp., p. 438, sec. 126.

See notes to PERJURY, vol. V, p. 705, sec. 5392, *post*, this volume, p. 1363.

1909 Supp., p. 440, sec. 135.

The word "corruptly" is capable of different meanings in different connections. As used in the section any endeavor to impede and obstruct the due administration of justice in the matter under investigation is corrupt. The endeavor need not be accompanied by payment or promises of payment of money as such an interpretation would quite unreasonably restrict the obvious purpose of the legislation. *Bosselman v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 82, 152 C. C. A. 132.

Erasures in records material to matter under inquiry by grand jury.—In *Bosselman v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 82, 152 C. C. A. 132, judgment of conviction was affirmed, the conviction being upon an indictment charging that the defendant in violation of this section had

corruptly influenced, obstructed, and impeded the due administration of justice by directing and requesting certain specified persons to make certain erasures, charges, and insertions in books and records material to a matter under inquiry by the grand jury.

1909 Supp., p. 444, sec. 150.

This section defines a number of offenses committed by: (1) Any one who shall use, or suffer to be used, for printing a plate from which has been, or may be, printed any obligation or other security of the United States. (2) Any one who shall sell or import such plate with intent to use the same for printing. (3) Any one who shall have in his control or possession any such plate, with intent to use the same, or suffer the same to be used in forging or counterfeiting any such obligation or other security. (4) Any one who "shall have in his possession, except under authority from the Treasurer or other proper officer, any obligation or other security made or executed in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same."

(5) Whoever shall make a print or photograph of any such obligation or security, or who shall sell or import the same. (6) Whoever, unauthorized by the Secretary, shall have and retain in his control or possession a distinctive paper which has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States. *Leib v. Halligan*, (C. C. A. 9th Cir. 1916) 236 Fed. 82, 149 C. C. A. 292.

"Obligations or securities" generally.—The fourth clause was not intended to be limited to those instruments only which purport to be securities or obligations of the United States, or which so closely resemble them in general appearance that they may be said to be made or executed, in whole or in part, after the similitude thereof. In this view it is immaterial whether or not the instrument was criminal in its inception, or was intended to simulate any security of the United States, or in any of its features purports to be an obligation or security of the United States. *Leib v. Halligan*, (C. C. A. 9th Cir. 1916) 236 Fed. 82, 149 C. C. A. 292.

Obligations issued by state banks.—The authorities are in conflict as to the question whether the possession of a state bank note may constitute the offense punishable by the fourth clause. Thus it has been held that obligations and securities purporting to be obligations and securities issued by a state bank are not in the similitude of any obligation issued by the United States. *U. S. v. Connors*, (D. C.

Ore. 1901) 111 Fed. 734; *U. S. v. Pitts*, (N. D. Cal. 1901) 112 Fed. 522. See *Contra*, however, *Leib v. Halligan*, (C. C. A. 9th Cir. 1916) 236 Fed. 82, 149 C. C. A. 292, where the authorities are reviewed.

Intent.—To constitute the offense defined in the fourth clause of this section, it is not necessary that there shall be a fraudulent or felonious intent. It is sufficient if the accused has in his possession, with the intent to use or sell, the paper which is there described. *Leib v. Haligan*, (C. C. A. 9th Cir. 1916) 236 Fed. 82, 149 C. C. A. 292.

1909 Supp., p. 448, sec. 163.

Sufficiency of indictment.—In *Linnigen v. Morgan*, (C. C. A. 8th Cir. 1917) 241 Fed. 645, 154 C. C. A. 403, holding, on habeas corpus after conviction, that the indictment was sufficient, the court said: "It is alleged in the first count that defendant had in his possession ten pieces of counterfeited coins in the likeness and similitude of the silver coin of the United States, which has been coined at the mints of the United States, commonly called a dollar, and in the second count that appellant uttered as genuine a counterfeited coin in the resemblance and similitude of the silver coin of the United States, which has been coined at the mints of the United States, commonly called a dollar. . . . The allegation in the indictment that appellant knew the coins to be counterfeited followed the terms of section 163 of the Penal Code, while this allegation was unnecessary under section 164. Each count of the indictment sufficiently stated an offense under section 163."

It is not necessary in order to charge a crime under section 163 that the indictment should negative the fact that the coins that defendant possessed or uttered were not minor coins of the United States, when they were described as being in the likeness and similitude of the silver coins of the United States which has been coined at the mints of the United States, commonly called a dollar. *Linnigen v. Morgan*, (C. C. A. 8th Cir. 1917) 241 Fed. 645, 154 C. C. A. 403.

Evidence—Guilty knowledge of character of coin.—See *Hess v. Bowen*, (C. C. A. 8th Cir. 1917) 241 Fed. 659, 154 C. C. A. 417.

Punishment.—On habeas corpus it is not a ground for the petitioner's discharge from imprisonment that the court omitted to impose a fine upon him, in addition to the sentence of imprisonment, as the petitioner was not injured thereby. *Linnigen v. Morgan*, (C. C. A. 8th Cir. 1917) 241 Fed. 645, 154 C. C. A. 403.

A defendant may be sentenced to imprisonment at hard labor under this section, although it does not as formerly

expressly permit such a sentence. This is due to section 338, Penal Laws, 1909 Supp., p. 496. *Linnigen v. Morgan*, (C. C. A. 8th Cir. 1917) 241 Fed. 645, 154 C. C. A. 403.

1909 Supp., p. 448, sec. 164.

Sufficiency of evidence.—In *Riggio v. U. S.*, (D. C. Mass. 1915) 223 Fed. 529, a conviction of the defendant for counterfeiting minor coins was upheld on a review of the evidence.

1909 Supp., p. 451, sec. 173.

"United States commissioners are neither judges nor courts, although they at some times act in a quasi judicial capacity and exercise the power of a court in so far as an act of Congress has conferred specific authority or imposed the performance of a special duty. . . . These commissioners may do what they are authorized to do and may issue search warrants when specially authorized to do so by some act of Congress, but they possess no general power in that respect." *U. S. v. Jones*, (N. D. N. Y. 1916) 230 Fed. 262.

1909 Supp., p. 456, sec. 190.

Sufficiency of evidence to support verdict.—In *Coleman v. U. S.*, (C. C. A. 6th Cir. 1917) 239 Fed. 711, 152 C. C. A. 545, the evidence in a prosecution under this section and section 192, PENAL LAWS, 1909 Supp., p. 457, was held sufficient to support a verdict against the plaintiff in error who had been convicted of the crime of breaking into a post office with intent to commit larceny and for stealing postage stamps and money.

Punishment.—Conviction for stealing a money order stamp could not be reversed because of a sentence seemingly over severe, but not excessive in a legal sense nor an abuse of discretion, even though the court may have taken into consideration the fact that the evidence showed the defendant to have been guilty of subornation of perjury in the case. *Peterson v. U. S.*, (C. C. A. 4th Cir. 1917) 246 Fed. 118, 158 C. C. A. 344.

1909 Supp., p. 457, sec. 192.

Joinder of counts.—An offense for burglarizing a post office under this section and an offense for stealing certain property of the United States out of that office under PENAL LAWS, 1909 Supp., p. 418, may be contained in the same indictment in separate counts and the defendant may be found guilty on both counts. *Morgan v. Sylvester*, (C. C. A. 8th Cir. 1916) 231 Fed. 886, 146 C. C. A. 82.

Evidence.—In *Coleman v. U. S.*, (C. C. A. 6th Cir. 1917) 239 Fed. 711, 152 C. C.

A. 545, it was held that the evidence supporting an indictment charging offenses under this section and section 190, PENAL LAWS, 1909, Supp., p. 456, was sufficient to warrant the case going to the jury.

1909 Supp., p. 457, sec. 194.

"Authorized depository for mail matter."—Boxes placed by tenants for the receipt of mail in the halls of buildings in which they have their places of business must be deemed to be authorized depositories for mail matter within the meaning of this section in view of a regulation promulgated as an order of the Post Office Department prior to the date of an alleged offense constituting "any letter box or other receptacle," etc., "a letter box for the receipt or delivery of mail matter within the meaning of" this Act. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406.

The top or outside of a letter box, attached to a lamp-post, is not an authorized depository for mail matter. (1883) 17 Op. Atty-Gen. 524, followed in *U. S. v. Lophansky*, (E. D. Pa. 1916) 232 Fed. 257.

Period of federal protection for mail matter.—The protection afforded by this section to mail matter deposited in an "authorized depository" does not cease with such deposit in a privately owned mail box constituted as an "authorized depository" by a valid postal regulation, but continues so long as the letter remains in the box. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406.

1909 Supp., p. 462, sec. 211.

"It is not enough that the letter or publication merely relate to sexual matters and illicit sexual relations, but it must be clothed in language and contain expressions which, with reasonable persons, tend to excite the sexual desires or passions or corrupt the morals of the reader in that direction." *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523, holding that language in a letter charging a woman with being a prostitute, and surrounded by prostitutes and bastards, did not have such tendency.

"Filthy," etc.—"The cases have been substantially uniform (I am not informed of any exception) in holding that a 'filthy' writing or letter, as described in the statute, must be 'filthy' in its relation to or reference to the sexual relations or desires. There are many filthy writings which have no reference to that subject, and I find no case which brings such writings or communications within the statute. . . . I am not content with the restricted construction placed by the courts on the language of section 211 of the Criminal Code, where it adds to the

words 'every obscene, lewd, or lascivious,' the words 'and every filthy . . . letter, writing . . . of an indecent character,' as it seems to me it was not the purpose of congress to restrict nonmailable letters to written or printed matter which relates to sexual acts and conduct and matters which will excite or tend to excite libidinous thoughts and sexual desires or debase and degrade the mind and morals of the reader in the direction indicated. . . . I think the language 'filthy . . . letter . . . of an indecent character' brings within the statute a communication sent to another through the mails which would not be covered by the preceding words obscene, lewd, and lascivious if it be a filthy letter of an indecent character, even though it is not of a character which would promote or excite sexual desires and emotions." *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523.

Libelous, etc., language.—Written letters, or printed or written matter which are merely abusive, scandalous, scurrilous, improper, intemperate, unjustifiable, offensive, vulgar or highly reprehensible, or even libelous, are not within the prohibitions of this statute. *U. S. v. Klauder*, (N. D. N. Y. 1917) 240 Fed. 501.

Letters.—The word "writing" appeared in the original Act of Congress. The word "letter" or "letters" did not. It was held that a "letter" was not one of the prohibited writings. The construction was based upon the fact that in all its other legislation, when Congress meant to include letters, it had used that word. *U. S. v. Chase*, (1890) 135 U. S. 255, 10 S. Ct. 756, 34 U. S. (L. ed.) 117. Following this ruling the word "letters" was inserted by amendment. Since then written messages or correspondence commonly known as letters, sent by one person to another through the mail, have been held to be within the Act. *U. S. v. Reinheimer*, (E. D. Pa. 1916) 233 Fed. 545.

Letter mailed by a person to himself.—The word "letter" as used in the statute does not include a letter or writing mailed by a person to himself. While it is the vile thing itself which is excluded from the mails, and the offense consists in the sending of what is thus excluded, and neither the sender nor the addressee is of any importance, except that it is the one who deposits it in the mail who is the guilty party named by the law, there is, however, involved in the thing condemned the thought of something published, and this element is lacking in a writing mailed by a person to himself. *U. S. v. Reinheimer*, (E. D. Pa. 1916) 233 Fed. 545.

Information as to abortion.—"On the adoption of the Penal Code the clauses 'where or by whom any act or operation of any kind for the procuring or production of abortion will be done or performed or how or by what means conception may

be prevented or abortion produced were introduced into the act. Before that, the statute forbade the use of the mails for obscene literature or writings, for articles and things adapted to prevent conception or produce abortion, and for printed or written matter giving information as to where, how, from whom or by what means such articles or things might be obtained or made. It aimed to keep out of the mails (1) obscene matter; (2) articles or things designed or intended for a use denounced by the act as immoral; and (3) written or printed matter in respect to such articles. Until the amendment, however, a letter or other written or printed information in respect, not to the articles excluded from the mails, but to the act of abortion, did not fall within the statute. We cannot concur in the contrary views expressed in *U. S. v. Somers*, (S. D. Cal. 1908) 164 Fed. 259, under which the word 'thing' in the original act was held to cover such a letter." *Bours v. U. S.*, (C. C. A. 7th Cir. 1915) 229 Fed. 960, 144 C. C. A. 242.

Sufficiency of indictment.—An indictment which charged that the defendant mailed a letter consisting of the figures "938" and "100" posted on the back of a circular, in answer to a letter of inquiry as to a proposed abortion, and which stated that the figures so posted on the back of the circular "then and there gave information that divers articles and things designed, adapted, and intended for producing abortion might be obtained at 938 Fillmore street at a cost of \$100" sufficiently charged an offense. *Wetzel v. U. S.*, (C. C. A. 9th Cir. 1916) 233 Fed. 984, 147 C. C. A. 658.

Joinder of counts.—A count charging a violation of this section by mailing a "filthy" letter was properly joined with a count charging violation of Penal Laws, section 212 by mailing a letter having "indecent" and "defamatory" terms on the envelope, where the acts of defendant were directed against one and the same person, were of the same general nature, and were clearly closely connected in point of time. *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523.

Multiple counts for same offense.—An objection to an indictment that it charged one offense in three counts should be made by motion to require the prosecution to elect, and not by a motion to quash. A defect, that all the counts are for the same offense, would be no ground for quashing all the counts, and motions to quash are not favored by the courts. *Wetzel v. U. S.*, (C. C. A. 9th Cir. 1916) 233 Fed. 984, 147 C. C. A. 658.

Power of court on demurrer.—On demurrer to an indictment the court has only power to decide whether the book or paper or letter is so clearly innocent that a jury should not pass on it at all.

U. S. v. Klauder, (N. D. N. Y. 1917) 240 Fed. 501.

Evidence—Character of prosecuting witness.—On the trial of an indictment charging the sending through the mails of an indecent letter, evidence as to the reputation of the prosecuting witness for chastity in the community is not admissible. The statute has regard only to the character of the letter, and not to the character of the person to whom it is addressed. *Robbins v. U. S.*, (C. C. A. 9th Cir. 1916) 229 Fed. 987, 144 C. C. A. 269.

1909 Supp., p. 463, sec. 212.

See notes to *POSTAL SERVICE*, vol. V, p. 849, § 3, *post*, p. 1365.

1909 Supp., p. 463, sec. 213.

An advertisement in a newspaper that its photographers would take snapshots of women shoppers in the shopping district, that these pictures would be developed in the usual way and then published with their heads cut off, and inviting the women photographed to identify their headless photo and offering a five dollar gold piece for each identification, was held not to fall within this section, as it did not present a lottery scheme because a lottery involves a scheme for raising money by selling chances to share in a distribution of prizes, a scheme for the distribution of prizes by chance. Neither was it a gift enterprise nor the kind of lot or chance which the Act of Congress strikes against, because the particular kind of chance involved in the advertisement in question did not require a parting with anything by members of the public for the prize offered. *Post Pub. Co. v. Murray*, (C. C. A. 1st Cir. 1916) 230 Fed. 773, 145 C. C. A. 83.

1909 Supp., p. 464, sec. 215.

See also notes to *POSTAL SERVICE*, vol. V, p. 973, sec. 5480, *post*, p. 1366.

Constitutionality.—*Religious freedom* secured by the Constitution is not infringed by this statutory provision so far as it undertakes to punish a person from pretending to entertain certain views, alleged by him to be of a religious character, for the false and fraudulent purpose of procuring money or other things of value from third parties by the use of the post office establishment, where the defendant's good faith is the cardinal question in determining his guilt. *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112.

What constitutes unlawful scheme.—In *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112, the court affirmed a conviction of the defendant for using the mails to obtain money, etc., by

falsely pretending to be one who had attained the supernatural state of self-immortality in the body by abstinence from divers evil practices, thus enabling him to conquer disease, death, poverty, and misery, and that this power could be transmitted by him to others who were willing to accept his teachings and pay therefor the sums demanded by him.

Limitations.—If the scheme or artifice was devised more than three years prior to the return of the indictment, but was in existence and the defendant was operating under it within three years, the case would be without the statute of limitations and might be prosecuted. *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

Sufficiency of indictment.—In *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112, affirming a conviction for violation of this section, the court said: "It [the indictment] alleges various pretensions and promises of the defendant, New, which are alleged to have been false and fraudulent, and to have been made for the purpose of obtaining money and other things of value from others, and it alleges that in pursuance of that fraudulent scheme he deposited in the post office certain letters, one of which was set out in each count of the indictment. Those alleged facts are essential elements of the offense denounced by the statute upon which the indictment was based, but all that are essential."

Charging fraud.—"The gist of the offense is the improper use of the mails. While the fraudulent design is essential, it is merely an element of the crime. As where an indictment charges burglary to commit theft, the theft is not described with the same particularity as if theft were the offense, so, in charging the use of the mails to defraud, the fraud need not be stated with the technical details required when swindling, or a like crime, is the subject of the indictment. . . . There is no rule that the description of a fraudulent scheme should mention all the auxiliary devices." *Whitehead v. U. S.*, (C. C. A. 5th Cir. 1917) 245 Fed. 385, 157 C. C. A. 547.

Evidence—*In general.*—The only essential elements being the fraudulent scheme and the use of the mails in its execution, the extent of success of the scheme as charged is in no manner necessary to be shown. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

Intent.—In *Lyman v. U. S.*, (C. C. A. 9th Cir. 1917) 241 Fed. 945, 154 C. C. A. 581, the court said: "Nor do we see any merit in the contention on the part of the plaintiff in error that the court erred in giving to the jury this instruction: 'Replying to the question which you have propounded to me, I instruct you that the mailing of a letter without the fraudulent intent would be no crime. If, however, the

evidence satisfies you beyond a reasonable doubt that the fraudulent intent was in the mind of the defendant before the mailing of any one of the letters mentioned in the indictment, then, as to the count in which that letter is set forth, the fraudulent intent is sufficiently established.' The question of the juror, to which the foregoing was the response, was as follows: 'Juror Brownstein: We would like to be enlightened in regard to the alleged intent of the defendant to defraud. Are we to consider his intent at the time of organizing the Panama Development Company, or at the time the several letters in the indictment were written and mailed, or any subsequent time?' . . . We see nothing in the case of *Durland v. U. S.*, [1896] 161 U. S. [306] 314, 16 S. Ct. 508, 40 U. S. (L. ed.) 709, relied upon by the plaintiff in error, justifying us in holding the instruction complained of erroneous."

On the trial of an indictment for using the mails to solicit from physicians, surgeons, and dentists accounts for collection upon commission, with the purpose of converting to defendant's use all such collections, an advertisement published by the defendant while he was carrying on such business of collecting offering to sell a half interest in "an exclusive business now paying more than \$250 per month" was admissible as tending to show representations which could be made good only by appropriating collections. *Clark v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 112, 157 C. C. A. 408.

Similar schemes.—The evidence of another, but similar, venture by the accused, is properly received as bearing on the question of fraudulent intent. *Trent v. U. S.*, (C. C. A. 8th Cir. 1916) 228 Fed. 648, 143 C. C. A. 170.

As the fraudulent intent is one of the material allegations in the indictment, evidence of other and similar ventures by the accused is properly admissible as bearing on the question of intent. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

Letters set forth in the indictment as having been mailed in execution of the scheme to defraud need not be to or from the intended victim of the fraud in order to be admissible. The execution of the scheme may be most effectually furthered, and the purpose of its execution or attempted execution most directly served, through communications by mail between the persons who concocted or entered into it. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

Letters alleged in the indictment to have been deposited in the mails in pursuance of the alleged scheme are of course admissible in evidence against the defendant. *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112.

If prior to and at the time a letter set forth as an overt act was mailed by the

defendant the alleged fraudulent scheme had been devised, and the defendant intentionally and for the purpose of carrying out the scheme wrote the letter described and mailed it within three years prior to the filing of the indictment, it was not necessary that the letter should on its face show that it was in furtherance of the scheme to defraud in order to render it admissible. *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

Proved copies of letters mailed to the defendant have been held admissible without otherwise accounting for the absence of the originals. *Trent v. U. S.*, (C. C. A. 8th Cir. 1916) 228 Fed. 648, 143 C. C. A. 170.

The mailing of letters may be shown by evidence of the custom and course of men's private offices and business. The mailing of letters postage prepaid raises a presumption of their receipt by the addressee. *Watlington v. U. S.*, (C. C. A. 8th Cir. 1916) 233 Fed. 247, 147 C. C. A. 253.

Sufficiency of evidence.—In *Sprinkle v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 111, 156 C. C. A. 539, the evidence was held sufficient to sustain a conviction for violation of this section by using the mails to obtain purchasers of pianos at a "sale price" fraudulently designed to look like a "marked down" price.

In *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89, the evidence there recited was held to be clearly sufficient for submission to the jury under appropriate instructions, and a conviction of using the mails in execution of a scheme to defraud by the sale of land was affirmed.

Search warrants.—"All that the case of *Weeks v. U. S.*, [1914] 232 U. S. 383, 34 S. Ct. 341, 58 U. S. (L. ed.) 652, L. R. A. 1915B 834, Ann. Cas. 1915C 1177, really decides is that when a person is accused of the commission of a crime and arrested by an officer without a warrant of arrest, and while so held away from his home other officers of the law without a search warrant go to his home and enter it without permission, no one being at home, and make a search of his rooms and furniture, and find and seize and without the consent of such arrested person take away his letters and envelopes of an incriminating nature and other property found on such premises and in any furniture found thereon used by him, such acts constitute an illegal search and seizure, and the papers and property so seized must be returned, and that the court has power, and it is its duty, under such circumstances, to direct and compel the United States attorney to whom such papers have been delivered to return same to the owner. However, considerable is said in the opinion of the court in that case which throws some light on the questions here involved,

Whether the issuing and execution of search warrants in criminal cases is limited to cases where Congress has expressly provided for their issue and execution is a question, and an important question. From the fact that Congress has specifically provided for the issue and execution of search warrants in revenue cases, in counterfeiting cases, and in customs cases only, we may infer that no such power exists in reference to post office depredations and post office fraud cases, such as the use of the United States mails in the execution of a scheme to defraud, in violation of section 215 of the Penal Code of the United States." *U. S. v. Jones*, (N. D. N. Y. 1916) 230 Fed. 262.

In the absence of a search warrant books and papers may not be legally seized, and if so seized and used in a prosecution under this section a conviction of the defendant will be reversed. *Flagg v. U. S.*, (C. C. A. 2d Cir. 1916) 233 Fed. 481, 147 C. C. A. 367.

Instructions.—Where the court instructs on a particular subject and the defendant desires more specific instructions thereon he should take exception to the charge, bringing to the court's notice the ground of exception. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

Puffing wares.—In *Chambers v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 513, 150 C. C. A. 395, plaintiffs in error were convicted of devising a scheme to defraud by means of the mails, the scheme being to sell land under water in Florida by false representations as to the character, fertility, and value of the land, and as to its availability for profitable farming operations, and for occupation by comfortable homes. On the appeal the court said: "Complaint is made that the court refused to give a requested instruction to the effect (1) that men engaged in the business of selling land have the habit of puffing their wares, and so long as the statements made are within any proper reasonable bounds they are not criminally liable; (2) that in order to find that the defendants devised a scheme to defraud in the sale of this land the jury must find that the statements which were made amounted actually to a substantial deception of those to whom the lands were attempted to be sold; and (3) that a certain degree of commendation by these defendants of their lands was allowable, and was not criminal, so long as the statements were not actually made in bad faith and with intention to deceive. There was, however, no error in refusing to give this instruction, because the second proposition in it is not the law, and because the first and third propositions, in the absence of any qualifications to the effect that positive statements of material existing facts calculated to deceive, such as the statements that the soil of the land is

black muck and is worth \$.6 a ton as fertilizer, do not fall within the category of innocent puffing, were indefinite, misleading, and inapplicable to the misrepresentations of facts of this nature on trial in the case in hand."

Question for jury.—The question whether a scheme to defraud was devised by the defendant and was carried out by the use of the mails is one of fact. *Cooper v. U. S.*, (C. C. A. 2d Cir. 1916) 232 Fed. 81, 146 C. C. A. 273.

Verdict of acquittal as res judicata.—A verdict of acquittal under this section is in no sense res judicata and does not prevent a writ for an injunction by the defendant against a postmaster to restrain the enforcement of a fraud order issued under R. S. secs. 3929, 4041 (see the title *POSTAL SERVICE*, vol. V, pp. 872, 946). *Sanden v. Morgan*, (S. D. N. Y. 1915) 225 Fed. 266.

1909 Supp., p. 466, sec. 218.

Conviction for aiding and abetting under indictment as principal.—One who knowingly aided or abetted another to alter a money order, though the change was not made by him, may be held guilty under an indictment charging him as a principal—by force of *PENAL LAWS*, § 332, 1909 Supp., p. 495. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

Evidence was held sufficient to sustain a conviction under this section for having altered a postal money order in Dean v. U. S., (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538, where the evidence is recapitulated.

1909 Supp., p. 470, sec. 232.

Nature of statute.—This and the following sections 233–235 of the Code (*PENAL LAWS*, 1909 Supp., p. 471) "are important regulations of commerce, designed for the protection of the lives of passengers and others, and must also be regarded as an important safeguard for the prevention of the use of instrumentalities of interstate and foreign commerce in aid of crimes which involve the use of high explosives" and a violation of them was regarded by Congress as of such serious character as to rank as a felony. *Horn v. Mitchell*, (C. C. A. 1st Cir. 1916) 232 Fed. 819, 147 C. C. A. 13.

Application—Generally.—These sections do not make illegal the transportation of explosives, but only their transportation on vessels or vehicles operated by a common carrier, and carrying passengers for hire or otherwise in violation of their provisions. The mode of conveyance rather than the transportation itself is the ground of offense, and a disregard of the safety of fellow passengers on trains engaged in interstate commerce, and a violation of the statutory regulations of interstate commerce constitute

the gravamen of the offense. *Horn v. Mitchell*, (C. C. A. 1st Cir. 1916) 232 Fed. 819, 147 C. C. A. 13.

1909 Supp., p. 471, sec. 235.

Defenses.—One who is charged with a violation of this section cannot set up as a defense that he was an officer in a foreign country engaged in war and that he was so transporting the explosive for the purpose of using it in an alleged act of war in the territory of the enemy. *Horn v. Mitchell*, (C. C. A. 1st Cir. 1916) 232 Fed. 819, 147 C. C. A. 13.

1909 Supp., p. 473, sec. 239.

Construction.—"This Act, notwithstanding its penal character, should be reasonably construed with a view to carry out the purpose for which it was enacted." *Danciger v. Cooley*, (1916) 98 Kan. 484, 158 Pac. 1119, *denying rehearing* (1916) 98 Kan. 38, 157 Pac. 453.

Retroactive effect.—This section cannot be used as an instrument of interpretation from which to deduce the conclusion that the power of a state to prohibit shipments of intoxicating liquors in interstate commerce under c. o. d. contracts existed prior to its enactment. *Rosenberger v. Pacific Express Co.*, (1916) 241 U. S. 48, 36 S. Ct. 510, 60 U. S. (L. ed.) 880.

Agent collecting purchase price.—But where it appeared that liquor dealers received written orders from their customers, and shipped the liquor to their own order mailing the bill of lading to their agent who delivered it to the customer for whom the liquor was intended and collected the purchase price, it was held that this section was violated. *Danciger v. Cooley*, (1916) 98 Kan. 38, 157 Pac. 453, *rehearing denied* (1916) 98 Kan. 484, 158 Pac. 1119.

1909 Supp., p. 473, sec. 240.

Marking packages—State laws.—So far as markings and inscriptions are contained on packages containing intoxicants, Congress has expressly exercised its power to regulate the interstate shipment, and has furthermore made forfeiture to the United States of the goods shipped a part of the penalty for non-compliance. In that respect it has occupied the whole field and by necessary implication has excluded others therefrom, as much so as it could have done by express prohibition. Hence a state statute requiring packages of intoxicating liquor transported within the state or to any point therein to be marked in a particular manner is void. *Chicago, etc., R. Co. v. Giles*, (D. C. Colo. 1916) 235 Fed. 804.

Regulations.—It is not within the province of the Treasury Department to prescribe regulations governing the marking of imported liquors to conform to

this section, since this is a criminal statute which has no reference to the collection of either internal revenue or duties on imports, and there is no statute authorizing the Secretary of the Treasury to formulate rules and regulations for the enforcement of a general criminal statute which has no relation to the collection of revenue. (1909) 28 Op. Atty.-Gen. 99.

Sufficiency.—In *U. S. v. Hillsdale Distillery Co.*, (D. C. N. D. 1917) 242 Fed. 536, it was urged that the label required by this section should specify the particular kind and quantity of each if more than one kind was contained in the package. The court held that this was not a sound interpretation of the law.

The statute requires that the particulars, it mentions shall be "plainly" shown on the label. Any attempt to evade the law by failing to set forth the particulars truthfully, or to disclose them plainly, falls within the condemnation of the statute. The label should be devoted to disclosing the facts mentioned in the statute, and not to advertising. Any attempt to cover up with advertising matter the facts which the law requires the label to reveal, so as readily to catch the eye, violates the law. *U. S. v. Hillsdale Distillery Co.*, (D. C. N. D. 1917) 242 Fed. 536.

1909 Supp., p. 474, sec. 245.

Response to decoy letters.—The fact that an offense was committed at the instance of government officials through decoy letters asking that obscene publications be sent to a fictitious person does not excuse the offender. "The system of detecting crime by the use of decoy letters, or decoy witnesses, is necessary to the proper administration of criminal justice, and is in quite general use. It does not of itself excuse the offender, unless a constituent element of the crime be thereby removed." *Hanish v. U. S.*, (C. C. A. 7th Cir. 1915) 227 Fed. 584, 142 C. C. A. 216.

Fictitious consignee.—When a publication is sent by interstate express the fact that it is billed to a fictitious person does not affect the character of the transaction as commerce. *Hanish v. U. S.*, (C. C. A. 7th Cir. 1915) 227 Fed. 584, 142 C. C. A. 216.

1909 Supp., p. 480, sec. 269.

See KIDNAPPING, vol. IV, p. 774, sec. 5526, *ante*, p. 1327.

1909 Supp., p. 481, sec. 272.

"Place purchased or otherwise acquired"—*State laws regulating civil matters.*—See *Steele v. Halligan*, (W. D. Wash. 1916) 229 Fed. 1011.

1909 Supp., p. 481, sec. 273.

Insanity as a defense.—See *Perkins v. U. S.*, (C. C. A. 4th Cir. 1915) 228 Fed. 408, 142 C. C. A. 638.

1909 Supp., p. 482, sec. 274.

"There are no elements of involuntary manslaughter.—The term 'involuntary' implies the absence of intention to kill." *Perkins v. U. S.*, (C. C. A. 4th Cir. 1915) 228 Fed. 408, 142 C. C. A. 638.

1909 Supp., p. 482, sec. 278.

What constitutes rape.—See *Oliver v. U. S.*, (C. C. A. 9th Cir. 1916) 230 Fed. 971, 145 C. C. A. 165.

1909 Supp., p. 484, sec. 287.

Fish in a pound on the high seas may be considered as reduced to possession so as to be the subject of larceny. *Miller v. U. S.*, (C. C. A. 3d Cir. 1917) 242 Fed. 907, 155 C. C. A. 495, L. R. A. 1918A 545.

1909 Supp., p. 494, sec. 328.

The New York State Conservation Law does not apply to tribal Indians living on reservations within the territorial limits of that state. *U. S. v. Hamilton*, (W. D. N. Y. 1915) 233 Fed. 685.

1909 Supp., p. 495, sec. 332.

In *U. S. v. Johnson*, (W. D. Tenn. 1915) 228 Fed. 251, it was held that the defendant was guilty as a principal of violating the Harrison Narcotic Law, Act of Dec. 17, 1914, 1916 Supp., p. 101, title INTERNAL REVENUE.

Offenses against postal service.—See *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

Violation of Selective Draft Law of May 18, 1917, in WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *ante*, this volume, p. 1010, see *Ruthenberg v. U. S.*, (1918) 245 U. S. 480, 38 S. Ct. 168; 62 U. S. (L. ed.) —.

Prior conviction of principal.—It is not necessary that a bankrupt should first be convicted before bringing to trial one charged with aiding and abetting in the concealment of assets from a trustee in bankruptcy. *Kaufman v. U. S.*, (C. C. A. 2d Cir. 1914) 212 Fed. 613, 129 C. C. A. 149, Ann. Cas. 1916C 466.

Indictment—Duplicity.—An indictment which charged the teller of a national bank with the abstraction of the moneys or funds of the bank and that he embezzled the moneys or funds of the bank, and which in the same counts charged that other defendants aided and abetted him in such abstraction, or misapplication or embezzlement, was held not demurrable for duplicity, since under 'this

section such aiders and abettors become principals in the same offense. *U. S. v. Rogers*, (N. D. N. Y. 1915) 226 Fed. 512.

1909 Supp., p. 495, sec. 335.

"Ought to be repealed."—In *U. S. v. Gaag*, (D. C. Mont. 1916) 237 Fed. 728, the court said of this section that it "harks back to barbaric days, and ought to be repealed."

A violation of the Anti-Drug Act of Dec. 17, 1914 (1916 Supp., p. 101),

though but a mere statutory infraction, and not a true crime, is by the arbitrary classification of this section a felony. *U. S. v. Gaag*, (D. C. Mont. 1916) 237 Fed. 728.

Effect on R. S. sec. 5209.—This section has no effect upon R. S. sec. 5209 (see NATIONAL BANKS, vol. V, p. 145), except to define as a felony the offense therein described. *Hoss v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 328, 146 C. C. A. 376; *Sheridan v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 305, 149 C. C. A. 437.

PERJURY

Vol. V, p. 701, sec. 5392.

The provisions in the Bankruptcy Act, § 7a (9) (see vol. I, p. 560), that no testimony given by a bankrupt on his examination shall be offered in evidence against him in any criminal proceeding, has reference only to crimes committed previous to the giving of such testimony, and not to any criminal proceeding based on a crime inherent in the bankrupt's examination, and in a prosecution for perjury committed during the examination the alleged false testimony not only may be given in evidence, but any other testimony of defendant given in the examination which is relevant to the issue and tends to establish the falsity of that on which the prosecution is based. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Civil service commission.—An applicant for a position in the civil service of the United States who in his sworn application required by the civil service commission knowingly makes false statements commits perjury. *U. S. v. Crandol*, (E. D. Va. 1916) 233 Fed. 331.

Indictment.—In *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256, the indictment charged that Patrick H. Coyle of Oneida, N. Y., on the 15th day of December, 1915, at the city of Oneida, in the northern district of New York, took an oath before George D. Russell, special master duly appointed by the court in bankruptcy, and then and there acting as such, that he would testify truly in the matter of Patrick H. Coyle, alleged bankrupt. The pendency of the proceeding was alleged, and the fact that the said Russell had authority to administer the oath. The indictment then charged that while being so examined and giving evidence before the said special master in the said proceeding, and in violation of section 125 of the Criminal Code of the United States of America [1909 Supp., p. 437],

said Coyle—"did willfully and contrary to said oath testify and state to the following question, to wit, 'Have you since October 24, 1915, by cash, check, or otherwise transferred, paid or set over or in any manner placed in the possession of your wife Mrs. Coyle, or your son, Frederick Coyle, any money whatsoever, except the \$150 and the \$75?' the answer, 'No sir,' which said answer, testimony and statement of the said defendant Patrick H. Coyle was and is a material one for the purpose of ascertaining the assets of the said Patrick H. Coyle and the disposition of the same, and which said answer, testimony, and statement was false and untrue, in that he, the said defendant, Patrick H. Coyle, theretofore and on the 15th day of November, 1915, paid to his son Frederick J. Coyle the sum of \$450, as he, the said defendant Patrick H. Coyle, then and there well knew," etc. It was held, on demurrer, that this indictment was sufficient.

Vol. V, p. 705, sec. 5393.

Oath required by law.—In *U. S. v. Morehead*, (1917) 243 U. S. 607, 37 S. Ct. 458, 61 U. S. (L. ed.) 926, it appeared that one Morehead was indicted under section 37 of PENAL LAWS, 1909 Supp., p. 415, for conspiring with others to commit the offense of subornation of perjury in connection with soldiers' declaratory statements, to be filed by defendant as agent, covering public lands under the Homestead Law. The perjury set forth in the indictment consisted in false swearing before notaries public and clerks of state courts to declaratory statements. It was contended by the defendant that the perjury was not committed because the oaths were not taken before persons authorized to take oaths in such a proceeding, but the court held to the contrary.

PHILIPPINE ISLANDS

Vol. V, p. 722, sec. 10.

Appellate review now confined to certiorari, see Act of Sept. 6, 1916, ch. 448, §§ 5 and 6, *ante*, this volume, title JUDICIARY, p. 422.

Vol. 5, p. 722, sec. 10.

Mode of review.—Writ of error was the proper method by which to review the judgment of the Supreme Court of the Philippines in a proceeding for registration of certain property under the Torrens System. *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) 165.

But on appeal and writ of error to review a decree in favor of defendant in a suit in which plaintiffs, in addition to claiming damages, prayed for cancellation of a certain contract and of the mortgages given to secure it, and defendant asked for affirmative relief and for an accounting and damages, the court said: "The action being of an equitable nature, the proper method of review is by appeal, and the writ of error will be dismissed."

Montelibano v. La Compania General De Tabacos, (1916) 241 U. S. 455, 36 S. Ct. 617, 60 U. S. (L. ed.) 1099.

Scope of review.—Upon a writ of error to review a judgment in a proceeding for registration under the Torrens System, the court will not reconsider the conclusions of the lower court, which find support in the record, in reaching its judgment. *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) 1651.

Appellate jurisdiction in divorce cases.—The general rule that the federal courts have no jurisdiction of the subject of divorce or alimony does not preclude an appeal from a decree of the Supreme Court of the Philippine Islands reversing a decree of the court of first instance, granting a divorce to a wife and awarding her as alimony pendente lite, and as her share of the conjugal property, a sum in excess of \$25,000. *De La Rama v. De La Rama*, (1906) 201 U. S. 303, 26 S. Ct. 485, 50 U. S. (L. ed.) 765; (1916) 241 U. S. 154, 36 Stat. 518, 60 U. S. (L. ed.) 932.

PORTO RICO

Vol. V, p. 767, sec. 14.

Bankruptcy.—Local laws prescribing the order in which debts of various kinds are to rank for payment out of various classes of assets forming the estate to be distributed in bankruptcy proceedings cannot be recognized for the purpose of giving a priority to a class of debts expressly dealt with as to priority by the National Bankruptcy Act itself. *In re Vidal*, (C. C. A. 1st Cir. 1916) 233 Fed. 733, 147 C. C. A. 499.

Vol. V, p. 777, sec. 3.

Causes between Spanish subjects.—Jurisdiction of the District Court under this section extends to a cause where the parties on both sides are subjects of the king of Spain. *Ortega v. Lara*, (1906) 202 U. S. 339, 26 S. Ct. 707, 50 U. S. (L. ed.) 1055. See also *Villamil v. Merced*, (C. C. A. 1st Cir. 1916) 239 Fed. 86, 152 C. C. A. 136.

POSTAL SERVICE

Vol. V, p. 794, sec. 3834.

Action on bond for loss of registered package.—In *U. S. Fidelity, etc., Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 397, 143 C. C. A. 517, (see also (C. C. A. 9th Cir. 1917) 246 Fed. 433, 158 C. C. A. 497) the court said: "The only issue involved in this case is whether, in view of the fact that under the regulations of the Post Office Department the government is only responsible in case of a loss of a registered package for an amount

not exceeding \$50, it can recover from the sureties on the bond of its employee, who embezzled a registered package containing a sum of money in excess of \$50, the full amount lost, provided it is not in excess of the penalty of the bond. This identical question was before us in *National Surety Co. v. U. S.*, [C. C. A. 8th Cir. 1904] 129 Fed. 70, 63 C. C. A. 512. It was there held that there could be such a recovery. This case is ruled by that decision, and it is unnecessary to add anything to it."

Vol. V, p. 839, sec. 3893.

See notes to PENAL LAWS, 1909 Supp., p. 462, § 211, *ante*, p. 1357.

Vol. V, p. 846, R. S. 3894.

See notes to PENAL LAWS, 1909 Supp., p. 463, § 213, *ante*, p. 1358.

Vol. V, p. 849, sec. 3.

Threatening language.—The following language written upon a postal card was held to be of a threatening character: "*In re Unique Tailor Co. v. Fox*, District Court. Your breach of stipulation has caused this case against you to be again placed in the hands of the proper officials for serving summons and complaint—this was held up since Aug. 2d and was to be held until 18th inst.—you will find same directed to you at proper address this time and no nonsense will be tolerated as before." *U. S. v. Prendergast*, (D. C. Ore. 1916) 237 Fed. 410.

"Defamatory" language.—Placing on an envelope an abbreviation following the female addressee's name known to the writer and to the recipient of the enclosed letter, as disclosed by the contents of such letter to the recipient thereof and to no one else, to charge immorality, etc., but which abbreviation to all others would have only an innocent signification, is not a violation of this section. *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523, thus holding as to word "Pros." alleged to be an abbreviation of "prostitute;" since "of itself, 'Pros.' does not suggest, even remotely, anything either indecent, lewd, lascivious, obscene, libelous, scurrilous, or of a defamatory character."

Vol. V, p. 872, sec. 3929.

A fraud order for retention of mail of one who was selling electric belts advertised to increase and preserve the sexual powers of men was justified by the admitted existence of some recent and fraudulent quackery in his business. *Hall v. Willcox*, (S. D. N. Y. 1906) 225 Fed. 333.

In *Sanden v. Morgan*, (S. D. N. Y. 1915) 225 Fed. 266, the court denied a motion for a preliminary injunction to restrain the defendant postmaster from enforcing a "fraud order" issued by the Postmaster General, the plaintiff in this suit being in receipt of about \$500 a day for belts generating and conveying electric currents.

Vol. V, p. 883, sec. 3950.

A contract of partnership for the expressed purpose of operating mail routes in the event that one of the partners should obtain contracts therefor, was not invalid, where there was no fact or circumstance from which a purpose to prevent competition in bidding might be inferred. *Hegness v. Chilberg*, (C. C. A.

9th Cir. 1915) 224 Fed. 28, 139 C. C. A. 492, the court saying: "In *Bellocks v. Russell*, [1845] 20 N. H. 427, 51 Am. Dec. 238, it was held that an agreement that one shall bid for several for a mail contract is not void unless made for some illegal purpose affecting public policy."

Vol. V, p. 893, sec. 3962.

Nature of power to impose fine.—"This power to impose a fine is one that is not known to the common law and cannot be enlarged by inference or intendment." *Great Northern R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 433, 149 C. C. A. 485.

Fines "for other delinquencies."—In *Great Northern R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 433, 149 C. C. A. 485, the court upheld the action of the Postmaster General in imposing upon the railroad company a fine of \$400 on account of the wreck of a mail train at a point on the company's route.

Fines for delinquencies in a prior term in a previous contract may be deducted from the earnings of a subsequent term in a later contract, where it appears that the contracts were made with implied acquiescence in the interpretation by the Post Office Department of contracts of this character that the Postmaster General had such power. *Great Northern R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 433, 149 C. C. A. 485.

Vol. V, p. 895, sec. 3963.

A contract of partnership for operating mail routes under contracts to be obtained in the name of one of the parties is not an assignment or transfer condemned by this section. *Hegness v. Chilberg*, (C. C. A. 9th Cir. 1915) 224 Fed. 28, 139 C. C. A. 492.

Vol. V, p. 958, sec. 2.

See note to PENAL LAWS, 1909 Supp., p. 466, § 218, *ante*, p. 1361.

Evidence was held sufficient to sustain a conviction under this section, embodied with R. S. sec. 5463 in PENAL LAWS, 1909 Supp., p. 466, § 218, for having altered a postal money order in *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 159 C. C. A. 538.

Vol. V, p. 965, sec. 5469.

See notes to PENAL LAWS, 1909 Supp., p. 457, § 194, *ante*, p. 1357.

Vol. V, p. 971, sec. 5475.

See notes to PENAL LAWS, 1909 Supp., p. 456, § 190, *ante*, p. 1356.

Vol. V, p. 972, sec. 5478.

See notes to PENAL LAWS, 1909 Supp., p. 457, § 192, *ante*, p. 1356.

Vol. V, p. 973, sec. 5480.

See also notes to PENAL LAWS, 1909 Supp., p. 464, § 215, *ante*, p. 1358.

I. IN GENERAL (p. 974)

This section is not beyond the power of Congress as applied to what may be a mere incident of a fraudulent scheme that itself is outside the jurisdiction of Congress to deal with. Whatever the limits to its power, it may forbid any such acts done in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not. *Badders v. U. S.*, (1916) 240 U. S. 391, 36 S. Ct. 367, 60 U. S. (L. ed.) 706.

The overt act of putting a letter into the post office of the United States is a matter that Congress may regulate, and it may make the deposit of each letter a separate offense. *Badders v. U. S.*, (1916) 240 U. S. 391, 36 S. Ct. 367, 60 U. S. (L. ed.) 706.

The history and purpose and the changes made therein in PENAL LAWS, 1909 Supp., p. 464, § 215, are set forth in *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

The purpose of the amendment to former R. S. sec. 5480, enacted March 2, 1889, (see vol. V, p. 974) was not to restrict but to extend the operation of the statute. *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

Conspiracy contrasted.—"The scheme to defraud denounced by the statute is a crime wholly different from conspiracy, and not to be confounded with the offense known as obtaining money under false pretenses. *Emanuel v. U. S.*, [C. C. A. 2d Cir. 1912] 196 Fed. [317] at 322, 116 C. C. A. 137. The gist of conspiracy is the agreement, the substance of an offense under section 215 [PENAL LAWS, 1909 Supp., p. 464] is the prosecution of a fraudulent purpose, toward the execution or fulfillment whereof the mail is used. One man may form and accomplish it, with or without assistance; but all who with criminal intent join themselves even slightly to the principal schemer are subject to the statute, although they may know nothing but their own share in the aggregate wrongdoing. One man may render the scheme unitary, though he has the assistance of many others at different times." *Schwartzberg v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 348, 154 C. C. A. 228.

II. SCHEME OR ARTIFICE TO DEFRAUD (p. 975)

The scheme to defraud condemned by this section is not confined to devices by which it is intended that the customer shall receive nothing for his money. *Sparks v. U. S.*, (C. C. A. 6th Cir. 1917)

241 Fed. 777, 154 C. C. A. 479; *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265; *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

Frauds perpetrated upon particular investors in order to prop up a failing enterprise not fraudulent in itself are not the class of frauds denounced by this section. There is a "real and vital difference between business projects which end and result in loss and disaster to the investors, and schemes which were intended to defraud their victims." *U. S. v. Bachman*, (E. D. Pa. 1917) 246 Fed. 1009, denying a motion in arrest and for a new trial after verdict of conviction.

While the word "artifice" signifies deceit or trickery the word "scheme" does not necessarily involve trickery or cunning. A scheme may include a plan or device for the legitimate accomplishment of an object. *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

"Defraud."—The artifice or scheme must be designed to defraud but the term defraud means only the wrongful purpose of injuring another. *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

This section does not require that the scheme should be fraudulent upon its face. All that is necessary is that it be a scheme reasonably calculated to deceive persons of ordinary comprehension and prudence and that the mail service of the United States be used and intended to be used in execution of the same. *Oesting v. U. S.*, (C. C. A. 9th Cir. 1916) 234 Fed. 304, 148 C. C. A. 206.

Relation of scheme to United States laws.—The scheme to defraud need have no original relation whatever to the laws of the United States. The mere incidental or unpremeditated use of the mails may give to the federal courts the trial of any state law offense which involves defrauding another person—this result being accomplished by the broad definitions of "defraud" and "scheme or artifice" which are now accepted. *Hendrey v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 5, 147 C. C. A. 75.

This section "includes everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future. The significant fact is the intent and purpose. . . . It was with the purpose of protecting the public against all such intentional efforts to despoil, and to prevent the post office from being used to carry them into effect, that this statute was passed; and it would strip it of value to confine it to such cases as disclose an actual misrepresentation as to some existing fact, and exclude those in which is only the allure-ment of a specious and glittering prom-

ise." *Durland v. U. S.*, (1896) 161 U. S. 306, 16 S. Ct. 508, 40 U. S. (L. ed.) 709, followed in *U. S. v. Stever*, (1911) 222 U. S. 167, 32 S. Ct. 51, 56 U. S. (L. ed.) 145; *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265; *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

Scheme as designed to defraud public generally.—"That in order to fall within the statute, a scheme need not be designed to defraud the public generally or the credulous especially, is established by *Weeber v. U. S.*, (C. C. [Colo. 1894]) 62 Fed. 740, decided at the circuit by Mr. Justice Brewer (Judges Caldwell and Sanborn concurring), and by the decision of the court in *Horman v. U. S.*, [C. C. A. 6th Cir. 1902] 116 Fed. 350, 53 C. C. A. 570, in an opinion written by the present Mr. Justice Day, in each of which cases a scheme to blackmail directed solely and specifically against a given individual or group of individuals was held a scheme to defraud within the meaning of the statute. An application for writ of certiorari in the *Horman* case was denied by the Supreme Court ([1902] 187 U. S. 641, 23 S. Ct. 841, 47 U. S. (L. ed.) 345)." *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

Exaggerations.—"There can be an honest, though mistaken, judgment of the future from existing conditions; even sincere but visionary optimism is allowable. But there can also be alluring suggestions and predictions of what will come to pass, put forth without reasonable warrant and with the fraudulent intent to profit by inducing belief and reliance among the credulous and uninformed. In fact that is one of the most successful methods of defrauding well-meaning people, who hope to relieve the stress of limited incomes." *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

Ordering a diamond ring by mail with intent not to pay for it amounts to a scheme or artifice to defraud. *Tucker v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 833, 140 C. C. A. 279.

False statement of financial condition.—See *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265; *U. S. v. Akers*, (N. D. Ga. 1916) 232 Fed. 963.

It is a violation of this section to make use of the mails to circulate a false statement concerning the financial condition of a bank, the purpose being to defraud. *Sparks v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 777, 154 C. C. A. 479, *McDonald v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 793, 154 C. C. A. 495.

In *Kaplan v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 389, 143 C. C. A. 509, it was said that the crucial question was whether or not the defendant devised a scheme to defraud by using false state-

ments of his financial condition to induce the sale to him on credit of a large quantity of goods which, had the truth been known, would not have been sold. There was a conviction which was affirmed.

Scheme relating to discounting and sale of promissory paper.—Inducing persons to part with their money in the discount or purchase of promissory paper may amount to a scheme to defraud. *Hart v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 911, 153 C. C. A. 597.

Selling stock, etc., of corporation.—In *Looker v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 932, 153 C. C. A. 618, the charge was that Looker, with one McLaughlin (who died before trial), devised a scheme for obtaining money by false pretenses from divers persons, by means of selling the stock and debenture certificates of a corporation, called the Monaton Company, and thereupon in furtherance thereof sent by mail copies of a resolution of the directors of the Monaton Company and circular letters to divers persons, naming them in the several counts. It was held that the defendant could be convicted although the evidence showed that the corporation was engaged in a lawful business.

Fraudulent promises respecting medicine or medical treatment.—In *Hughes v. U. S.*, (C. C. A. 5th Cir. 1916) 231 Fed. 50, 145 C. C. A. 238, an indictment showing a scheme to defraud by physicians was held sufficient.

In *Samuels v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 536, 146 C. C. A. 494, Ann. Cas. 1917A 711, the scheme to defraud related to misrepresentation as to the virtues of certain medicines, and there was a conviction.

A person falsely representing himself as a physician professionally equipped and specially trained in the diagnosis and treatment of certain diseases and ailments for the purpose of inspiring intended dupes with confidence in him and trust in his judgment of their condition is guilty of the offense of devising a scheme to defraud within the meaning of this statute. *U. S. v. Smith*, (E. D. Pa. 1915) 222 Fed. 165.

Fraudulent promises respecting divine healing.—See *U. S. v. Schlatter*, (S. D. Cal. 1916) 235 Fed. 381.

Scheme devised by individual and not corporation.—In *Oesting v. U. S.*, (C. C. A. 9th Cir. 1916) 234 Fed. 304, 148 C. C. A. 206, the question arose whether the indictment sufficiently showed that the defendant, an individual, and not a corporation, devised the scheme, and the court said: "Referring to the charge that the plaintiff in error, under the name and guise of 'Dr. Jordan, L. J. Jordan, Incorporated, and Jordan Museum of Anatomy,' devised a certain scheme and artifice to defraud, etc., the objection is made that the charge is equivalent to saying that a corporation conceived the scheme,

and that the defendant is charged only with acting for the corporation. No such meaning can be found in the language of the charge. It distinctly alleges that the defendant acted under the guise of a corporation, and that he conceived the scheme. It would make no difference whether there was or was not such a corporation, so long as the defendant devised the scheme to defraud, whether acting for the corporation or in his own behalf."

Where two or more persons jointly devise and execute a scheme to defraud by the use of the mails, they may thereby become in effect partners in the criminal purpose of so using the mails to defraud. If they do, the acts of each thereafter, during the existence and execution of the scheme, done in furtherance of that execution, may become the acts of all the partners, and each may be convicted of the mailing of a letter which one of his partners caused to be mailed in the execution of the scheme. *Chambers v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 513, 150 C. C. A. 395.

Intent.—In *McDonald v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 793, 154 C. C. A. 495, where the defendants were convicted of using the mails to circulate a false statement as to the financial condition of a bank, it was held that their guilt should be determined by their actual intent to defraud rather than by their carelessness or recklessness in banking, or violation of banking laws.

III. OPENING CORRESPONDENCE THROUGH THE MAILS (p. 978)

In general.—"Under section 215 it is not essential that the use of the mails be contemplated by the fraudulent scheme. It may have been carefully designed to avoid using the mails altogether, but if in the execution of the scheme the mails are in fact used, the act is violated. *Farmer v. U. S.*, 223 Fed. 903, 139 C. C. A. 341." *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

The word "letter" occurring in the statute is a comprehensive term. An envelope properly stamped and directed, containing a money order only, payable to the addressee, is, according to the popular understanding and in law, a letter. It may be written or printed, or partly written and partly printed, as is usually the case with money orders. *Finnegan v. U. S.*, (C. C. A. 6th Cir. 1916) 231 Fed. 561, 145 C. C. A. 447.

Decoy letters.—In *Freeman v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 353, the court said: "It is contended that the writing and mailing of the letters which are set out in the indictment were not criminal, and do not constitute crimes, for the reason that the letters were solic-

ited by the United States post office inspectors in letters written by them and sent through the mails to Dr. Jordan as decoy letters, that the government officers initiated the crime, and that the case is thereby brought within the principle of the decisions of this court in *Woo Wai v. U. S.*, [C. C. A. 9th Cir. 1915] 223 Fed. [412] 414, 137 C. C. A. 604, and *Sam Yick v. U. S.*, [C. C. A. 9th Cir. 1917] 240 Fed. 60 [153 C. C. A. 96]. The ruling in each of the cases so referred to was based upon the ground that the government officers had suggested the crime and induced its commission, and that the offense did not have its origin in the mind of the accused. The distinction between those cases and the case at bar is plain. Here the accused was suspected of being engaged in using the mails in a scheme to defraud. It was to ascertain whether such was the case, and not to suggest the commission of a crime which otherwise would not have been committed, that the decoy letters were written. The case comes clearly within the doctrine of *Grimm v. U. S.*, [1895] 156 U. S. 604, 15 S. Ct. 470, 39 (L. ed.) 550."

Letters to victims after receipt of money.—"The scheme alleged, being one for obtaining money through the fraudulent representations and practices set forth, the use of the mails, even after the money is received, for the purpose of assisting in retaining the money, or to convey to the victim assurances calculated to lull him into inaction and to postpone, perhaps indefinitely, his taking action in respect to his loss, is within the purview of the law, which condemns depositing in or taking from the mails any letters, etc., for the purpose of executing any scheme to defraud." *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

IV. DEPOSITING AND RECEIVING LETTERS FROM THE MAIL (p. 979)

Mailing by agent.—The mailing of a letter by an agent of the defendant is a mailing by the defendant. *U. S. v. Kenofskey*, (1917) 243 U. S. 440, 37 S. Ct. 438, 61 U. S. (L. ed.) 836, reversing (E. D. La. 1916) 235 Fed. 1019; *Trent v. U. S.*, (C. C. A. 8th Cir. 1916) 228 Fed. 648, 143 C. C. A. 170.

Where drafts and checks received from victims of a fraudulent scheme by those actively engaged in it were turned over to the defendant, who rendered guilty assistance by turning them over to a local bank for collection, he thereby made the bank his innocent agent, and knowledge was legally imputable to him of the custom of banks to forward such paper for collection by mail, so that when the bank deposited the letters of transmittal in the mails, he, in contemplation of law, caused it to do so. *Spear v. U. S.*, (C. C. A. 8th Cir. 1917) 246 Fed. 250, 158 C. C. A. 410.

V. INDICTMENT AND SENTENCE (p. 981)

Indictment—In general.—In *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143, the indictment there set forth in substance and charging a scheme and artifice to use the mail for the purpose of selling certain ten-acre tracts of worthless land represented to be of high grade and quality, was held sufficient to charge a violation of this statute.

"In the absence of any averments showing a real purpose to defraud purchasers out of their money, the indictment is insufficient." *U. S. v. Schwarz*, (N. D. Cal. 1915) 230 Fed. 537.

Where the defendant is not misled to his prejudice it is immaterial that the indictment charged that the use of the mails was an element of the original scheme to defraud, and that the trial judge made such finding necessary to conviction. *Tucker v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 833, 140 C. C. A. 279.

"A general averment that defendants devised a scheme to defraud is by itself not sufficient, without descriptive details showing its character and that it was reasonably calculated to effect the wrongful design. Here the details in descriptive form fall short, but we think the direct averments of what defendants and their associates did and intended are fairly available to and explanatory of the scheme to defraud charged in general language." *Spear v. U. S.*, (C. C. A. 8th Cir. 1916) 228 Fed. 485, 143 C. C. A. 67.

"In an indictment for mailing a letter in execution or attempted execution of a scheme to defraud, in violation of this statute, if the scheme is sufficiently outlined to show its design and adaptability to deceive and to fairly acquaint the accused with what he is required to meet, it answers the requirements of the statute. *Brooks v. U. S.*, [C. C. A.] 146 Fed. 223, 76 C. C. A. 581. The test to be applied is, not whether the material averments of this indictment might have been made more accurate and certain, but whether they plainly embrace in their terms both requirements, of notice of the ultimate facts to be proved against the accused, and specification thereof which will leave no second prosecution open for the alleged offense. If these requisites are sufficiently stated it is the duty of the court to uphold the indictment." *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

Description of scheme to defraud.—In an indictment for using the mails in execution of a scheme to defraud creditors of bankrupts by using the mails, if defendants fraudulently devised a scheme to falsely represent their commercial collection "agency" as having done things which it had not, or as having information concerning, or taken steps affecting

certain bankrupt debtors, which it had not, the fraudulent scheme was the same whether the alleged "agency" was a corporation, partnership, or what not, and it was not necessary to allege its capacity as a business entity. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 157 C. C. A. 429.

In an indictment containing counts for conspiracy under PENAL LAWS, § 37, 1909 Supp., p. 415, to violate this section, and counts for a violation of this section (now PENAL LAWS, § 215, 1909 Supp., p. 464), "it is necessary only to set forth generally the scheme or artifice which the defendants devised and to charge the use of the mails in execution of the scheme. . . . And the scheme itself is not required to be charged with the detail and particularity necessary in an indictment for the specific offense of obtaining property through false representations." *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 157 C. C. A. 429.

"While the particulars of the scheme are matters of substance, and must be described with certainty sufficient to show its existence and character, and to fairly acquaint the accused with the particular fraudulent scheme charged against them, the scheme itself need not be pleaded with all the certainty as to time, place, and circumstance requisite in charging the gist of the offense, the mailing of the letter or other article, in execution or attempted execution of the scheme." *Colburn v. U. S.*, (C. C. A. 8th Cir. 1915) 223 Fed. 590, 139 C. C. A. 136; *Gardner v. U. S.*, (C. C. A. 8th Cir. 1916) 230 Fed. 575, 144 C. C. A. 629.

Where the first count set out the fraudulent scheme in detail it was sufficient for the following counts to refer to and make the first count a part thereof without repeating the details. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

In *McClendon v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 590, 139 C. C. A. it was claimed that the first count which charged the scheme to have been to send a forged check through the mail for collection, did not describe the forgery with the particularity required by the statutes of the state of Missouri in indictments for forgery. The court said: "Counsel overlook the fact that this is not an indictment for forgery, nor even for fraud; but the gist of the offense is the mailing of the letters in execution or attempted execution of the scheme. It is true the particulars of the scheme must be described with certainty sufficient to show its existence and character, and fairly acquaint the accused with the particulars of the fraudulent scheme charged against her, but need not be pleaded with all the certainty as to time, place, and circumstances requisite in charging the gist of the offense, the mailing of the letter in

execution or attempted execution of the scheme. *Colburn v. U. S.*, [C. C. A. 8th Cir. 1915] 223 Fed. 590, 139 C. C. A. 136. Judge Adams, who delivered the opinion of this court in that case, refers to the authorities, and it is unnecessary to repeat them here."

The fraudulent intent of the defendant is a question to be passed upon by the jury and it should be clearly stated in an indictment. *Bettman v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 819, 140 C. C. A. 265.

"It is contended that the intent to perpetrate the fraud must be alleged in the part of the indictment which follows the *videlicet*, and that it is not sufficient to allege it in the descriptive part of the indictment. This contention is without merit. It is sufficient if it is charged in any part of the indictment." *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

"It is claimed that the indictment is fatally defective, because it does not charge that he 'the defendant' deposited, or caused to be deposited, in the post office of the United States, the letters set out in the indictment 'knowingly,' although each count charges that he devised a scheme and artifice to defraud 'unlawfully, knowingly, fraudulently, designedly, and falsely.' The statute does not require it, for it does not in this connection use the word 'knowingly'; and, this being a statutory offense, it is only necessary to charge it in the general language of the statute, provided that the description is accompanied by a statement of all the particulars essential to constitute the offense, or crime, and to acquaint the accused with the nature of the charge." *Samuels v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 536, 146 C. C. A. 494, Ann. Cas. 1917A 711.

Names of intended victims.—But where the charge is a scheme to defraud a class, not resolvable into individuals, it is evident that the persons intended to be injured are not known and no necessity therefore exists for an averment to that effect. *Finnegan v. U. S.*, (C. C. A. 6th Cir. 1916) 231 Fed. 561, 145 C. C. A. 447.

In *Mounday v. U. S.*, (C. C. A. 8th Cir. 1915) 225 Fed. 965, 140 C. C. A. 93, the court said: "Another contention against the validity of the indictment is the fact that each count thereof charges that the scheme was to defraud a person named and various other persons to the grand jurors unknown. It is argued that as there were ten counts in the indictment, and in each count one person was named as the one to be defrauded, that the allegation in each count that the grand jurors did not know the other person was false, as the names of the other persons appear in the other counts of the indictment, showing that the grand jurors did

know who the other persons were. The indictment must be taken as a whole, and, so considered, it appears that all the persons that the grand jurors did know were named. The defendants intended to defraud all persons who should do business with them, that is, the public, and they did not know themselves, when they devised the scheme to defraud, the particular persons who would be defrauded."

Mailing of letter, etc.—The gist of the offense denounced by this section is the mailing of a letter or other article mentioned in the execution or attempted execution of a scheme to defraud, and such mailing being the gist of the offense must therefore be pleaded in an indictment with great certainty as to time, place, and circumstances, so as thereby to advise the accused of the exact nature and cause of the accusation against him, in order that he may properly prepare his defense and be able to make use of a conviction or acquittal as a protection against a further prosecution for the same offense. *Colburn v. U. S.*, (C. C. A. 8th Cir. 1915) 223 Fed. 590, 139 C. C. A. 136.

In *Gardner v. U. S.*, (C. C. A. 8th Cir. 1916) 230 Fed. 575, 144 C. C. A. 629, the court said: "It is first objected that counts 1 and 2 of the indictment are fatally defective for want of an averment that the defendants mailed the letters set forth in the indictment for the purpose of executing the alleged scheme. We cannot understand this objection, for both counts charge in reference to the mailing of the letters that they were mailed or placed in the post office 'in and for the purpose, and with the intention on their part of executing and effecting the said scheme and artifice and attempting so to do.'"

Where the indictment charged that the letters were mailed "for the purpose of executing the said scheme and artifice to defraud, and for the purpose of attempting so to do," and the letters themselves did not indicate that they could not and did not have such tendency, but, on the contrary, carry the inference that they could and did, there was no merit in the contention that it was not sufficiently alleged that they were mailed for the purpose of executing the scheme. *Pree-man v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

In *U. S. v. Dale*, (N. D. Cal. 1915) 230 Fed. 750, an indictment was held insufficient because the fact that the mails were used in furtherance of the scheme to defraud was not clearly alleged.

To whom envelopes addressed.—In *McClendon v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 523, 143 C. C. A. 591, the court said: "Another objection is that, in the first, second, and third counts, the pleader fails to allege to whom the envelopes sent through the mails were addressed, and re-

lies on *Durland v. U. S.*, [1896] 161 U. S. 306, 16 S. Ct. 508, 40 U. S. (L. ed.) 709. But that case is squarely in point against the contention; the court holding that the allegation that the name of the addressee is to the grand jury unknown is sufficient. And this is alleged in this indictment. The indictment reads: 'That letter was inclosed in an envelope, a further description of which said envelope is to the grand jury unknown,' and then sets out the letter contained in the missing envelope."

Number of counts.—In *Mounday v. U. S.*, (C. C. A. 8th Cir. 1915) 225 Fed. 965, 140 C. C. A. 93, the court said: "It is next contended that under section 215 of the Penal Code [1909 Supp., p. 464] the defendants could not be punished but for one offense, viz., the devising of one scheme or artifice to defraud. There is nothing in this contention. It has been the uniform holding of the courts that the gist of the offense is the use of the post office in the execution of the scheme to defraud and not the scheme itself."

Joinder with conspiracy.—In prosecutions under this section a conspiracy count based on section 37, in PENAL LAWS, 1909 Supp., p. 415, is frequently tacked upon the principal charge, for the purpose of widening the field of evidence. *Hart v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 911, 153 C. C. A. 597.

Sentence—*Cruel and unusual punishment.*—In *Badders v. U. S.*, (1916) 240

U. S. 391, 36 S. Ct. 367, 60 U. S. (L. ed.) 706, the plaintiff in error was indicted for placing letters in the mail for the purpose of executing a scheme to defraud, devised by him. There were twelve counts, on seven of which, each relating to a different letter, he was found guilty. He was sentenced to five years' imprisonment on each count, the periods being concurrent, not cumulative, and also to a fine of \$1,000 on each, or \$7,000 in all. One of the objections raised by the plaintiff in error was that if this section made the deposit of each letter a separate offense subject to such punishment as it received in the case it imposed cruel and unusual punishment and excessive fine, but the court held that there was no doubt that the law might make each putting of a letter into the post office a separate offense, and that there was no ground for declaring the punishment unconstitutional.

1909 Supp., p. 525. [*Matter excluded from mails.*]

See notes to PENAL LAWS, 1909 Supp., p. 462, § 211, *ante*, p. 1357.

1912 Supp., p. 302, sec. 2.

See notes to PENAL LAWS, 1909 Supp., p. 462, § 211, *ante*, p. 1357.

POST OFFICE DEPARTMENT

Vol. VI, p. 6, sec. 396.

Rescinding tainted contract.—Where the government superintendent of the free delivery service made a secret arrangement with a corporation which sought and obtained a contract to furnish letter carriers' satchels whereby the said superintendent, in violation of his duties, was to receive a share of the profits, the Postmaster General upon learning of the corrupt agreement was

justified in rescinding the contract and stopping further payments under it, and even though said corrupt arrangement was without the actual knowledge of the corporation, if it was known to the agents of the corporation and the latter accepted the fruits of their efforts, thereby making their knowledge its own. *Crocker v. U. S.*, (1916) 240 U. S. 74, 36 S. Ct. 245, 60 U. S. (L. ed.) 533.

PRISONS AND PRISONERS

Vol. VI, p. 36, sec. 5541.

Criminal contempt.—Criminal contempt of a federal court is an "offense" under this section. *Creekmore v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 743, 150 C. C. A. 497.

A sentence for a year and a day, in a criminal contempt case, is within the discretion of the court, and may be in a peni-

tentiary. *Creekmore v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 743, 150 C. C. A. 497.

1912 Supp., p. 304, sec. 1.

Commuted sentence.—Where a sentence commuted is from eight to four years the prisoner is entitled to a parole after serving one-third of the commuted sentence

provided his conduct has been such as to satisfy the conditions of this Act. *Duehay v. Thompson*, (C. C. A. 9th Cir. 1915) 223 Fed. 305, 138 C. C. A. 547, *affirming* (W. D. Wash. 1914) 217 Fed. 484.

1912 Supp., p. 304, sec. 3.

Conclusiveness of board's opinion.—It must appear to the board by showing in the manner prescribed that there is reasonable probability that the applicant for

a parole will abide by the law; and if in the belief or judgment of the board his release is not incompatible with the welfare of society, the board may, in its discretion, authorize parole. The opinion called for is that of the board, and the power to authorize release is vested exclusively in the board to be exercised as it may, in its wisdom, see fit. *Redman v. Duehay*, (C. C. A. 9th Cir. 1917) 246 Fed. 283, 159 C. C. A. 13.

PRIZE FIGHTS

1914 Supp., p. 326, sec. 1.

Constitutionality.—This Act is constitutional. *U. S. v. Johnston*, (N. D. N. Y. 1916) 232 Fed. 970.

"Brought into United States."—In *Pantomimic Corp. v. Malone*, (C. C. A. 2d Cir. 1916) 238 Fed. 135, 151 C. C. A. 211, the facts were as follows: April 5, 1915, one Jess Willard and one Jack Johnson engaged in a prize fight at the city of Havana, Cuba. Moving pictures of the fight were taken on negative films, from which positive films could be and were developed for public exhibition. Early in April, 1916, a moving picture camera was set up eight inches on the American side of the international boundary between the state of New York and the Dominion of Canada, with the lens directed toward Canada. About eight inches on the Canadian side of the boundary a box was set up facing the camera. An original

positive film taken from the negative film made at Havana was run on a reel through the box in front of an electric light on the Canadian side. An unexposed film was run from a reel through the camera on the American side directly opposite it. The two reels were connected by an endless chain, so that the result was that an exact negative reproduction was taken on the American side of the positive film on the Canadian side. From this secondary negative, rephotographed by another camera, a positive film capable of public exhibition could be made and was made. It was held that these facts showed a violation of the statute.

Conspiracy to commit offense.—In *U. S. v. Johnston*, (N. D. N. Y. 1916) 232 Fed. 970, an indictment for conspiracy to violate this section was sustained on demurrer.

PUBLIC CONTRACTS

Vol. VI, p. 132, sec. 3744.

Unsigned contract as void or voidable.—The fact that a contract is not signed by government officers as required by this section is not a good defense to an action by the government for a breach of the contract, as it is not void but voidable at the election of the government, the statute being for its benefit. *U. S. v. New York, etc., Steamship Co.*, (1915) 239 U. S. 88, 36 S. Ct. 41, 60 U. S. (L. ed.) 161, *reversing* (C. C. A. 2d Cir. 1913) 209 Fed. 1007, 126 C. C. A. 668; (C. C. A. 2d Cir. 1913) 206 Fed. 443, 124 C. C. A. 325.

Vol. VI, p. 125, sec. 1.

Labor or materials.—*Drills* used in the actual construction of the work may be recovered for as materials. *National*

Surety Co. v. U. S., (C. C. A. 6th Cir. 1916) 228 Fed. 577, 143 C. C. A. 99, L. R. A. 1917A 336.

Provisions furnished contractor's board-house.—Groceries and provisions furnished to the contractor's boarding house and consumed by his employees does not constitute "labor" or "materials" used in the construction of the work. Food for the employees never contributes to the work, except after it is transmitted into that form of labor which, as labor, is protected. The statute does not give twice a claim for one thing. *National Surety Co. v. U. S.*, (C. C. A. 6th Cir. 1916) 228 Fed. 577, 143 C. C. A. 99, L. R. A. 1917A 336.

Coal for an engine may be allowed as a material; it is expended as a material; it never is and never can be transformed and merged into that labor which is the

"labor performed" as distinguished from "material furnished." *National Surety Co. v. U. S.*, (C. C. A. 6th Cir. 1916) 228 Fed. 577, 143 C. C. A. 99, L. R. A. 1917A 336.

Defective bond.—Where the bond is defective in that it does not contain the additional obligation required by the statute, and the contracts do not provide that the contractor shall pay for the material that goes into the work, liability cannot be extended to the sureties on the theory that where the contract requires the contractor to furnish all materials, this is equivalent to an agreement on his part to pay for the same and that the bond having been given to secure the faithful performance of the contract, the sureties can be held liable for an amount due for materials furnished the contractor. The court may not by construction make other and different contracts than those made by the parties. *Babcock v. American Surety Co.*, (C. C. A. 8th Cir. 1916) 236 Fed. 340, 149 C. C. A. 472.

Material variation of terms of contract.—After the terms of contract have been agreed upon, the measure of the surety's liability is thereby fixed, and, in the case of an individual surety, a material change without his consent will relieve him from liability. But this rule has been qualified in its application to companies that make a business of guaranty insurance and such companies are not relieved by such a change in the contract as would relieve an individual surety unless the change has done them harm. *American Bonding Co. v. U. S.*, (C. C. A. 3d Cir. 1916) 233 Fed. 364, 147 C. C. A. 300, *citing* *Atlantic Trust, etc., Co. v. Laurinburg*, (C. C. A. 4th Cir. 1908) 163 Fed. 690, 90 C. C. A. 274; *U. S. v. Fidelity Co. v. U. S.*, (C. C. A. 3d Cir. 1910) 178 Fed. 692, 102 C. C. A. 192; *U. S. v. Lynch*, (D. C. Del. 1912) 192 Fed. 364; *Pittsburg-Buffalo Co. v. American Fidelity Co.*, (C. C. A. 3d Cir. 1915) 219 Fed. 818, 135 C. C. A. 488.

The assignee of a claim is entitled to all the benefits of the statute. *U. S. v. Brent*, (W. D. S. C. 1916) 236 Fed. 771.

Action on bond—*Jurisdiction of court.* The provision of the Act which gives exclusive jurisdiction to the court in the district where the contract was to be performed applies only to an action instituted by the persons supplying labor and materials themselves in the name of the United States; when the United States itself institutes any action under the statute on the bond of a contractor it may do so without being restricted to the district of performance. *U. S. v. Marshall*, (C. C. A. 2d Cir. 1915) 225 Fed. 760, 141 C. C. A. 26, *distinguishing* *U. S. v. Congress Constr. Co.*, (1911) 222 U. S. 199, 32 S. Ct. 44, 56 U. S. (L. ed.) 163.

Parties—Who may sue.—The statute

indicates an alternative procedure. The United States is given the first right of action, and the subcontractor no right of action at all until six months after the final settlement with the general contractor. If the United States has exercised the right of action given to it by bringing its suit within the six months, then the subcontractors are permitted to intervene as use plaintiff. If, however, the United States does not bring its action, then after the expiration of six months the subcontractors may bring the action in the name of the United States to their use. *U. S. v. Emery*, (E. D. Pa. 1915) 225 Fed. 287. For cases under the original enactment of Aug. 13, 1894, which did not authorize the United States to bring suits of its own motion against the obligors in such bonds as were therein provided for, but which merely delegated authority to the laborer or materialman to use the name of the United States for his use and benefit in any court having jurisdiction of the subject matter and the parties, see *U. S. v. National Surety Co.*, (C. C. A. 8th Cir. 1899) 92 Fed. 549, 34 C. C. A. 526; *U. S. v. Henderlong*, (C. C. Ind. 1900) 102 Fed. 2; *U. S. v. American Surety Co.*, (S. D. N. Y. 1903) 127 Fed. 490; *U. S. v. U. S. Fidelity, etc., Co.*, (1906) 78 Vt. 445, 63 Atl. 581.

An amendment of a complaint, which does not allege a new or different cause of action but which merely corrects a defective statement of an existing right, by the addition of appropriate allegations, is allowable. *Illinois Surety Co. v. U. S.*, (1916) 240 U. S. 214, 36 S. Ct. 321, 60 U. S. (L. ed.) 609, *distinguishing* *Texas Portland Cement Co. v. McCord*, (1914) 233 U. S. 157, 34 S. Ct. 550, 58 U. S. (L. ed.) 893.

Statement of claim.—In *U. S. v. Emery*, (E. D. Pa. 1915) 225 Fed. 287, the argument was addressed to the court that the statement of claim, filed by an intervening plaintiff, was insufficient, because the statute gives a right of action which did not before exist, and that its existence is conditional, one of the conditions being that the United States shall not of itself bring suit upon the bond, and that there was no negating of such action in the statement of claim. There was no averment of the fact that a suit was commenced by the United States within the six months but the court was asked to hold that the statement of claim was insufficient because the pendency of such action was not negated therein. The court said: "This we cannot do. A general principle of pleading is that the existence of a fact must be averred by the party upon whom rests the affirmative and that a negative need not be pleaded. The jurisdictional fact upon which the right of action in this respect is granted is

that the action cannot be commenced at the instance of the subcontractor within six months, nor after a year from the date of final settlement between the United States and the general contractor. These facts are averred in the statement of claim, and there is no presumption that the United States has brought its suit. Indeed the issuance of the certificate provided by the Act itself negatives the fact of action by the United States because under the provisions of the Act, it is only to issue where no such action has been brought."

Defenses.—A surety may as a general rule set up any defense of which his principal may take advantage. *American Bonding Co. v. U. S.*, (C. C. A. 3d Cir. 1916) 233 Fed. 364, 147 C. C. A. 300.

Vol. X, p. 343. [*Act of Feb. 24, 1905.*]

"Final settlement" of the contract.—The pivotal words are not "final payment" but "final settlement," and in view of the significance of the latter term in administrative practice, it is hardly likely that it would have been used had it been intended to denote payment. The word "settlement" in connection with public transactions and accounts has been used from the beginning to describe administrative determination by the proper authority, of the amount due. *Illinois Surety Co. v. U. S.*, (1916) 240 U. S. 214, 36 S. Ct. 321, 60 U. S. (L. ed.) 609, *modifying and affirming* (C. C. A. 4th Cir. 1914) 215 Fed. 334, 131 C. C. A. 476.

PUBLIC LANDS

Vol. VI, p. 210, sec. 446.

"The Land Department of the United States is a special tribunal with judicial functions, and has exclusive jurisdiction of issues affecting title to the public lands until patent is issued." *Reed v. St. Paul, etc., R. Co.*, (W. D. Wash. 1915) 234 Fed. 123.

Vol. VI, p. 212, sec. 453.

Jurisdiction of commissioners in general.—The surveying of the public lands is an administrative act confided to the control of the commissioner of the general land office under the direction of the Secretary of the Interior. It is competent for the commissioner acting within this authority, to direct how surveys shall be made and to require that they shall be subject to his examination and approval before they are filed as officially complete in the local land office. *U. S. v. Morrison*, (1916) 240 U. S. 192, 36 S. Ct. 326, 60 U. S. (L. ed.) 599.

Vol. VI, p. 225, sec. 2225.

Fees.—By virtue of R. S. sec. 1765, in **PUBLIC OFFICERS AND EMPLOYEES**, vol. VI, p. 595, the surveyor-general of Louisiana was held not entitled to fees for furnishing copies of plat of surveys, and transcripts from the records of his office to various individuals requiring them. *Lewis v. U. S.*, (1917) 244 U. S. 134, 37 S. Ct. 570, 61 U. S. (L. ed.) 1039, *affirming* (1915) 50 Ct. Cl. 226.

Vol. VI, p. 285, sec. 2289.

Forcible entry.—This statute does not deprive a party in peaceful possession of the right to maintain an action of forcible entry and detainer under a state statute

against one who, by force or stealth, obtains possession in order to initiate a homestead claim. *Denee v. Ankeny*, (1918) 246 U. S. 208, 38 S. Ct. 226, 62 U. S. (L. ed.) 669, *affirming* (1915) 85 Wash. 322, 148 Pac. 15.

Vol. VI, p. 290, sec. 2290.

Recovery of payment.—Where a patent is canceled by reason of the entryman's fraud, the wrongdoer must restore the title unlawfully obtained and abide the judgment of Congress as to whether the consideration paid shall be refunded. A suit to annul a patent is not within the reason of the ordinary rule that a vendor suing to annul a sale fraudulently induced must offer and be ready to return the consideration received. *Causey v. U. S.*, (1916) 240 U. S. 399, 36 S. Ct. 365, 60 U. S. (L. ed.) 711.

Vol. VI, p. 292, sec. 2291.

Refund of consideration on annulment of patent.—When a suit is brought to annul a patent obtained in violation of these restrictions, the purpose is not merely to regain the title but also to enforce a public statute and maintain the policy underlying it. Such a suit is not within the reason of the ordinary rule that a vendor suing to annul a sale fraudulently induced must offer and be ready to return the consideration received. *Causey v. U. S.*, (1916) 240 U. S. 399, 36 S. Ct. 365, 60 U. S. (L. ed.) 711.

Succession of widow to inchoate homestead right.—The widow of a deceased entryman, who takes advantage of the provisions of this section and R. S. sec. 2301 in **PUBLIC LANDS**, vol. VI, p. 317, and com-

pletes her husband's residence and obtains a patent from the government, but who, during the lifetime of her husband, joined with him in a mortgage on the land in question, in which she personally promised to pay the debt secured, and executed personal covenants of seisin and quiet possession, was held to be estopped by such covenants from asserting her after-acquired title, in an action brought by her to determine adverse claims and to quiet title as against the purchaser under the foreclosure of said mortgage. *Martin v. Yager*, (1915) 30 N. D. 577, 153 N. W. 286.

Vol. VI, p. 336, sec. 2362.

The statute of limitations of six years, even though not pleaded, applies to a suit under this section in the Court of Claims to recover purchase-money. *Quinn v. U. S.*, (1917) 52 Ct. Cl. 496.

Vol. VI, p. 353, sec. 2.

Rights conferred and vested by the Right-of-way Act of Dec. 15, 1870, ch. 2, 16 Stat., L. 395, were not disturbed by this section. *Salt Lake Invest. Co. v. Oregon Short Line R. Co.*, (1918) 246 U. S. 416, 38 S. Ct. 348, 62 U. S. (L. ed.) 823, *affirming* (1915) 46 Utah 203, 148 Pac. 439.

Vol. VI, p. 392, sec. 1.

Agreement to convey after vesting of title is in violation of the decisions of the Land Department, against public policy, and gives no right of action for breach. *Eymann v. Wright*, (Cal. 1917) 169 Pac. 1037.

Vol. VI, p. 404, sec. 2480.

Decision by Secretary of Interior as to character of land cannot be collaterally attacked. *State v. New*, (1917) 280 Ill. 393, 117 N. E. 597.

Vol. VI, p. 438, sec. 5.

Determination by land department.—If the Secretary of the Interior has made a mistake in overruling the contention by a state that the title to certain land passed to it under the Act of Aug. 3, 1892, ch. 362, 27 Stat. L. 347, and in deciding that a superior title was acquired by a corporation found to be a bona fide purchaser, the error cannot be redressed by a suit by the state to quiet title and to enjoin the issuance of patents to such corporation, where such decision was not arbitrary and was made upon full hearing. "The remedy must be sought in the courts after the issuance of patent." *Minnesota v. Lane*, (1918) 247 U. S. 243, 38 S. Ct. 508, 62 U. S. (L. ed.) 1098.

Bona fide purchasers.—In *Krueger v. U. S.*, (1918) 246 U. S. 69, 38 S. Ct. 262,

62 U. S. (L. ed.) 582, *affirming* (C. C. A. 8th Cir. 1915) 228 Fed. 97, 142 C. C. A. 503, a suit by the government to cancel a land patent, it was held, on the evidence, that the defendant had not sustained the burden of showing she was a bona fide purchaser, but that under the circumstances she had constructive notice of fraud.

Vol. VI, p. 449, sec. 1.

"The proviso must be given the effect of a curative measure confined to lands theretofore patented, and not granting dispensation for frauds or mistakes thereafter occurring." *U. S. v. St. Paul, etc., R. Co.*, (1918) 247 U. S. 310, 38 S. Ct. 525, 62 U. S. (L. ed.) 1130, *reversing* (C. C. A. 9th Cir. 1915) 225 Fed. 27, 139 C. C. A. 301, and holding the proviso was not a bar to a suit by the government to annul a patent applied for and issued long after its enactment.

Vol. VI, p. 450, sec. 2.

Application of section.—Homestead entry.—Whether or not this section applies to a patent for a homestead entry, commuted to a cash entry, seems to admit of some doubt. But the title of the Act is broad enough to include all patents erroneously or fraudulently issued under any of the Acts of Congress and would therefore include a fraudulent entry under the Homestead Law. *U. S. v. Pitan*, (D. C. S. D. 1915) 224 Fed. 604.

Recovery.—The Act indicates the purpose of Congress that as to lands erroneously or fraudulently patented, for which nothing has been received by the government, it shall recover only the minimum government price thereof from the patentee, upon the title being confirmed in a good faith purchaser from him. *U. S. v. Norris*, (C. C. A. 8th Cir. 1915) 222 Fed. 14, 137 C. C. A. 552; *U. S. v. Pitan*, (D. C. S. D. 1915) 224 Fed. 604.

Vol. VI, p. 462, sec. 2275.

When title vests.—This statute imposes no limitation upon the authority of Congress to dispose of the lands before title passed to the state; and if title passes upon survey, it must be upon a survey duly completed according to the authorized regulations of the Department. *U. S. v. Morrison*, (1916) 240 U. S. 192, 36 S. Ct. 326, 60 U. S. (L. ed.) 599.

Vol. VI, p. 498, sec. 2477.

Acceptance.—Under the Colorado statute, the public lands were subject to the rights of an entryman until the board of county commissioners declared the section and township lines on the public domain public highways. *Korf v. Itten*, (Colo. 1917) 169 Pac. 148.

Vol. VI, p. 508, sec. 1.

A railroad indemnity grant is subject to the requirement of this section. *U. S. v. Lane*, (1917) 46 App. Cas. (D. C.) 74.

Vol. VI, p. 512, sec. 2. [*Act of May 11, 1898.*]

Purpose and effect.—This Act "neither enlarges the Act of 1891 in such manner as to supersede the Act of 1896, nor reinstates sections 2339 and 2340 of the Revised Statutes in so far as those sections have been affected by the Act of 1896." *Utah Power, etc., Co. v. U. S.*, (C. C. A. 8th Cir. 1915) 230 Fed. 328, 144 C. C. A. 470.

Vol. VI, p. 514, sec. 2448.

Application of section.—This section seems to be applicable only to cases where the entryman dies after final proof and before patent. *In re Evans*, (D. C. Idaho 1916) 235 Fed. 956.

Vol. VI, p. 525, sec. 7.

"Pending contest or protest."—As applied to public land affairs the term "contest" has been long employed to designate a proceeding by an adverse or intending claimant conducted in his own interest against the entry of another, and the term "protest" has been commonly used to designate any complaint or objection, whether by a public agent or a private citizen which is intended to be and is made the basis of some action or proceeding in the public right against an existing entry. *Lane v. Hoglund*, (1917) 244 U. S. 174, 37 S. Ct. 558, 61 U. S. (L. ed.) 1066, *affirming* (1916) 44 App. Cas. (D. C.) 310.

Where a report of a deputy forest supervisor recommending the cancellation of a homestead entry on land within a national forest reserve "on account of nonresidence and lack of cultivation," is received at the general land office but is not acted on until after the expiration of the two year limitation period contained in the proviso of the above section, it does not constitute a "pending contest or protest." *Lane v. Hoglund*, (1917) 244 U. S. 174, 37 S. Ct. 558, 61 U. S. (L. ed.) 1066, *affirming* (1916) 44 App. Cas. (D. C.) 310.

Mandamus to compel issuance of patent.—In case of the refusal of the Secretary of the Interior to issue the patent, mandamus lies to compel him to do so. *Lane v. Hoglund*, (1917) 244 U. S. 174, 37 S. Ct. 558, 61 U. S. (L. ed.) 1066, *affirming* (1916) 44 App. Cas. (D. C.) 310.

Vol. VI, p. 526, sec. 8.

Scope of statute.—The correction of a mistake is not an attempt to vacate or annul the patent. *Wilson v. U. S.*, (1917) 245 U. S. 24, 38 S. Ct. 21, 62 U. S. (L. ed.)

128, *affirming* (C. C. A. 8th Cir. 1915) 227 Fed. 827, 142 C. C. A. 351, and holding that the statute did not apply to an action by the government to quiet its title to land erroneously excluded from a patent under the mistaken assumption that a lake existed within meander lines run in making the survey.

When fraud is concealed by the wrongdoers the statute does not begin to run until discovery of the fraud. *Exploration Co. v. U. S.*, (1918) 247 U. S. 435, 38 S. Ct. 571, 62 U. S. (L. ed.) 1200; *U. S. v. Booth-Kelly Lumber Co.*, (D. C. Ore. 1917) 246 Fed. 970.

Bona fide mortgagee.—A bona fide mortgagee of land for which the mortgagor holds a patent, even though the mortgage was executed prior to the patent, has rights superior in equity to the United States in a suit to annul a land patent for fraud. *U. S. v. Grover*, (N. D. Cal. 1915) 227 Fed. 181.

Action to set aside patent.—This statute is strictly one of limitation and does not create the right to maintain an action to set aside a patent. *U. S. v. Koleno*, (C. C. A. 8th Cir. 1915) 226 Fed. 180, 141 C. C. A. 178.

Recovery for fraud.—The government is not barred by this section of the right to recover the value of lands to which a patent has been fraudulently obtained by the defendant. *U. S. v. Whited*, (1918) 246 U. S. 552, 38 S. Ct. 367, 62 U. S. (L. ed.) 879.

Desiring to give stability to titles depending on patent, the government has preferred to confirm such titles after six years in the patentee, and thereby waive any right of action it may have had for annulment of the patent, but the language of the limitations Act is not susceptible of broader construction, and indicates no intentment to bar the government of its right of action to recover the value of land obtained through fraud. *U. S. v. Pitan*, (D. C. S. D. 1915) 224 Fed. 604, *affirmed* (C. C. A. 8th Cir. 1917) 241 Fed. 364, 154 C. C. A. 244.

So the mere fact that the government permitted the patent to become valid by the statute of limitations instead of by its express ratification would not affect the right to maintain an action for damages. *Pitan v. U. S.*, (C. C. A. 8th Cir. 1917) 241 Fed. 364, 154 C. C. A. 244, *affirming* (D. C. S. D. 1915) 224 Fed. 604.

But this section has no application to an action at law to recover specific damages for the fraudulent acquisition of land by a patentee from the government and for the fraudulent sale thereof by him to third parties. *Bistline v. U. S.*, (C. C. A. 9th Cir. 1916) 229 Fed. 546, 144 C. C. A. 6.

Election of remedies.—Where title to public lands has been divested through fraud, the government may either bring

a suit in equity to cancel the patent, or at its option maintain an action at law to recover the value of the land. *Bistline v. U. S.*, (C. C. A. 9th Cir. 1916) 229 Fed. 546, 144 C. C. A. 6.

Laches.—Where the United States is not the real party in interest but merely a nominal complainant in an action to cancel a land patent, it is barred by laches and bound by the same principles thereto that govern an individual. *U. S. v. Fletcher*, (D. C. S. D. 1916) 231 Fed. 326.

And the mere institution of a suit or the filing of a lis pendens will not relieve from the charge of laches. If there is failure to prosecute diligently the consequences are the same as if no action had been begun. *U. S. v. Fletcher*, (D. C. S. D. 1916) 231 Fed. 326.

Vol. VI, p. 533, sec. 1.

A state statute prohibiting any person having charge of sheep from allowing them to graze on the federal public domain previously occupied by cattle was valid and not in conflict with this Act. *Omaechevarria v. Idaho*, (1918) 246 U. S. 343, 38 S. Ct. 323, 62 U. S. (L. ed.) 763, *affirming* (1915) 27 Idaho 797, 152 Pac. 280, which was conviction in a prosecution under the state statute.

Color of title.—Lands held under color of title and in good faith are not affected by this section. *Smith v. Sandusky Third Nat. Exch. Bank*, (1917) 244 U. S. 184, 37 S. Ct. 516, 61 U. S. (L. ed.) 1071, *affirming* (1915) 20 N. M. 264, 148 Pac. 512, *following* *Cameron v. U. S.*, (1893) 148 U. S. 301, 13 S. Ct. 595, 37 U. S. (L. ed.) 459.

The clause at the close of this section prohibits "merely the assertion of an exclusive right to use or occupation by force or intimidation or by what would be equivalent in effect to an inclosure." *Omaechevarria v. Idaho*, (1918) 246 U. S. 343, 38 S. Ct. 323, 62 U. S. (L. ed.) 763.

Under Rem. & Bal. (Wash.) Code, § 811, an action of forcible entry and detainer will lie against one who, to initiate a homestead claim, forcibly enters upon land, which was surrounded by a fence, where the occupant was holding it under claim of right and color of title, and he and his predecessor had so held it for more than twenty years. *Denee v. Ankeny*, (1918) 246 U. S. 208, 38 S. Ct. 226, 62 U. S. (L. ed.) 669, *affirming* (1916) 91 Wash. 693, 157 Pac. 1199.

1909 Supp., p. 549, sec. 1.

In a suit to recover purchase money it was held that an odd numbered section embraced in the grant of public lands to a railroad pre-empted by an entryman subsequent to the filing of the railroad's map of general route, but prior to its

map of definite location, was open to pre-emption entry under the public land laws. *Laughlin v. U. S.*, (1917) 52 Ct. Cl. 292.

1909 Supp., p. 549, sec. 2.

[March 26, 1908, ch. 102.]

An action for repayment of excess was sustained by the Court of Claims in *Maginnis v. U. S.*, (1917) 52 Ct. Cl. 271.

1909 Supp., p. 550, sec. 2.

A corporation cannot become an assignee by operation of law, by virtue of an attachment or a judgment. *Stockmen's Nat. Bank v. Hofeldt*, (1917) 54 Mont. 205, 169 Pac. 48.

1912 Supp., p. 321, sec. 1.

Name of Act.—This Act is known as the "Pickett Act." *U. S. v. Grass Creek Oil, etc., Co.*, (C. C. A. 8th Cir. 1916) 236 Fed. 481, 149 C. C. A. 533.

Withdrawals prior to Act.—The effect of this section was not to repudiate withdrawals made by the President prior to its enactment. *U. S. v. McCutcheon*, (S. D. Cal. 1915) 234 Fed. 702; *U. S. v. Midway Northern Oil Co.*, (S. D. Cal. 1916) 232 Fed. 619.

1912 Supp., p. 321, sec. 2.

"The general purpose of this act" was expounded in *U. S. v. Thirty-Two Oil Co.*, (S. D. Cal. 1917) 242 Fed. 730.

"It is true the Pickett Act provides that the right of a bona fide occupant or claimant at the date of a withdrawal order, and who was at such time in diligent prosecution of 'work leading to discovery,' shall not be impaired or affected so long as such occupant or claimant shall continue in diligent prosecution of 'said work,' referring logically to work leading to discovery, thus implying that when discovery is made his right shall no longer continue. It cannot be supposed, however, that Congress intended any such result. The duty therefore devolves upon the court to search out the true meaning of the law, and to permit the spirit and reason to prevail over the letter. *U. S. v. Mulvey*, [C. C. A. 2d Cir. 1916] 232 Fed. 513, 146 C. C. A. 471; *Holy Trinity Church v. U. S.*, [1892] 143 U. S. 457, 12 S. Ct. 511, 36 U. S. (L. ed.) 226. And, so construed, is conferred upon an occupant or claimant of withdrawn land, who is within its provisions, the right to continue his work to a discovery, and the benefit thereof, as if the land had not been withdrawn, with the same right in the government to re-enter, if the diligence was not continuous, as a private citizen would have had if the land had not been withdrawn." *U. S. v. North American Oil Consol.*, (S. D. Cal. 1917) 242 Fed. 723.

Diligent prosecution of work.—"The Pickett Act (36 Stat. 847), . . . while neither acknowledging nor repudiating the validity of the withdrawal order, limited the extent to which such order might otherwise go, if valid, by protecting from withdrawal those who were at the date of withdrawal 'in diligent prosecution of work leading to discovery of oil or gas.' In other words, by this Act Congress sought to give oil locators before discovery the same rights as against the government that judicial decisions had given them as against third persons. There is no inference to be drawn, however, that Congress, legislating, as it then was as to withdrawals and in aid of the proprietary rights of the government, was intending to confer any additional rights, particularly as against the government, upon those claiming, without a discovery, land withdrawn by competent authority. The net result of the situation, then, was that, upon the withdrawal of the land embraced within his claim, in the absence of a discovery, a claimant possessed no rights at all, as against the government, save the right, if he were then actually engaged in the diligent prosecution of work leading to a discovery of oil or gas on such claim to 'continue in diligent prosecution' of such work until a discovery, as a result of such continued diligent prosecution, had been effected. By that event, of course, and not till then, his immunity as against attack by the government in its proprietary capacity would be complete. Previously to such event, and in the absence of the required diligent prosecution of work, he has no defense to the government's claims." *U. S. v. Stockton Midway Oil Co.*, (S. D. Cal. 1917) 240 Fed. 1006.

"The proviso in the Pickett Act is somewhat indefinite and uncertain, but when interpreted in the light of the known conditions and the purpose of Congress, it was intended, I take it, to confer upon those occupying or claiming in good faith at the time of withdrawal public land within a withdrawn area, with the bona fide intention of complying with the mining laws, and who were at such time in diligent prosecution of work leading to discovery thereon, the right to continue such work if discovery was subsequently made, and the right to retain possession and extract the oil, or take title by patent, the same as if the land had not been withdrawn." *U. S. v. Thirty-two Oil Co.*, (S. D. Cal. 1917) 242 Fed. 730.

"What constitutes diligent prosecution of work does not lend itself to exact definition. Diligence is a relative term, and what is due diligence in a given case must be determined by the circumstances. *U. S. v. North American Oil Consol.*, (S. D. Cal. 1917) 242 Fed. 723.

Lack of diligent prosecution of work leading to a discovery of oil was held to have been shown as matter of law in

U. S. v. McCutchen, (S. D. Cal. 1915) 234 Fed. 702.

Work done upon precise land.—"Though it may not be so phrased in express terms, the clear inference to be drawn from the Pickett Act is that Congress intended that the work therein provided for should be done upon the precise land which might be the subject of a withdrawal order." *U. S. v. Thirty-Two Oil Co.*, (S. D. Cal. 1917) 242 Fed. 730.

"It is not necessary that the work being performed at the time of the withdrawal was on the particular tract in question, but before it can be deemed work leading to discovery thereon it must have been such as would reasonably tend to that end, and been presently and purposely designed for that purpose." *U. S. v. Thirty-Two Oil Co.*, (S. D. Cal. 1917) 242 Fed. 730.

Marking boundaries.—"There was no law, state or national, at the date of the withdrawal, authorizing or requiring the marking of boundaries of a mining location or the posting or recording of notice of location prior to discovery; but a practice had grown up in the oil districts to do so, which operated by common consent as an aid in tracing the boundaries of the claim, and as constructive occupation or possession of the described area, and gave the locators or their assignees a preference right to the possession as against all persons, except the United States, while in diligent prosecution of work leading to discovery, in order that they might make discovery and a valid location. *U. S. v. North American Oil Consol.*, [S. D. Cal. 1917] 242 Fed. 723, just decided. It was this right, existing at time of withdrawal, Congress had in mind and intended to make valid as against the government by the provisos of the Pickett Act, within the limitations, if any, therein contained, and which it declared should not 'be affected or impaired' by a presidential withdrawal. When, therefore, the occupation or claim was under such a location, the area or extent thereof should, for the purposes of the rights conferred, be determined thereby. Each location, which could not exceed 160 acres, so marked on the ground and described in the notice, should be considered as a separate unit, regardless of the number of such locations, contiguous or otherwise, occupied or claimed at the date of the withdrawal by any one person or corporation, and the work contemplated in the act is work leading to discovery on the particular location." *U. S. v. Thirty-Two Oil Co.*, (S. D. Cal. 1917) 242 Fed. 730.

Sufficiency of evidence.—In *U. S. v. Ohio Oil Co.*, (D. C. Wyo. 1916) 240 Fed. 996, which was a suit in equity by the United States to have lands in possession of the defendants declared by decree to have been at all times after the date of a certain withdrawal order lawfully withdrawn

from mineral exploration it was held that the evidence was sufficient to show that the defendants were at the date of the

withdrawal order, bona fide claimants of the lands in controversy, and in actual occupancy of them.

PUBLIC OFFICERS

Vol. VI, p. 614. [*Act of Feb. 8, 1899.*]

Purpose of Act.—“The remedial Act was to enable pending proceedings against public officials in their official capacity to be continued when necessary to obtain settlement of the questions involved.” *Roberts v. Lowe*, (S. D. N. Y. 1916) 236 Fed. 604.

Successor of tax collector.—Under this

Act one who has paid taxes illegally exacted by a collector of internal revenue cannot maintain an action against his successor, no action having previously been instituted against the collector who exacted the taxes. *Roberts v. Lowe*, (S. D. N. Y. 1916) 236 Fed. 604; *Philadelphia, etc., R. Co. v. Lederer*, (C. C. A. 3d Cir. 1917) 242 Fed. 492, 155 C. C. A. 268, *affirming* (E. D. Pa. 1917) 239 Fed. 184.

PUBLIC PROPERTY, BUILDINGS AND GROUNDS

Vol. VI, p. 704. [*Act of Aug. 18, 1890.*]

Conformity.—By virtue of this statute the federal courts are required to follow the local practice, pleadings, forms and proceedings. They are not required to observe any provision concerning any matter of substance prescribed in the local procedure. *Kanakanui v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 923, 157 C. C. A. 273.

Vol. VI, p. 704, sec. 3748.

Evidence of pledge.—In *Bolland v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 529,

15 C. C. A. 465, the fact that a pistol was found in the possession of the accused, who was not a soldier or officer of the United States, was held to be presumptive evidence that the same had been pledged to the accused.

Vol. VI, p. 714, sec. 3753.

Party entitled to immunity.—This statute is designed for the protection of the government and can be invoked only by the United States. *Missouri Valley Bridge, etc., Co. v. Blake*, (C. C. A. 4th Cir. 1916) 231 Fed. 417, 145 C. C. A. 411.

RAILROADS

Vol. VI, p. 752, sec. 1.

The main purpose of this section is to save the lives and limbs of those men who heretofore have been required to go on the tops of moving trains to set the hand brakes. *U. S. v. Grand Rapids, etc., Ry.*, (E. D. Mich. 1916) 244 Fed. 609.

Constitutionality.—“The obvious purpose of the statute being to protect men employed upon trains in the movement of interstate commerce, the power of Congress may be fully exerted in the premises,

and, the statute being fairly within the scope of the regulation of commerce among the states, in our opinion its validity is not impaired by the due process clause of the Fifth Amendment to the Constitution.” *Great Northern R. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 406, 157 C. C. A. 32; *U. S. v. Great Northern R. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 927, 144 C. C. A. 209.

“The construction of these statutes has been most benevolent, looking carefully to ascertain whether the particular thing

complained of came within the mischief of the act." *International R. Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 238 Fed. 317, 151 C. C. A. 333.

A "train" includes a string of cars being transferred from one railroad yard to another, the transfer being something more than a "switching" operation which is not within the provisions of this Act. *U. S. v. Louisville, etc., Bridge Co.*, (W. D. Ky. 1916) 236 Fed. 1001.

Equipment.—A carrier is liable for defective equipment on its road notwithstanding that it has no control over the equipment. Thus where it allows a lumber company to operate logging trains over a part of its road, such trains being under the exclusive control of the lumber company, the carrier is nevertheless liable for defective equipment. *U. S. v. Northwestern Pac. R. Co.*, (N. D. Cal. 1916) 235 Fed. 965.

The duty to equip, and maintain equipment, required by this section is absolute and mandatory. *Pennsylvania Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming* (N. D. Ohio 1915) 237 Fed. 471. "It is no excuse that the railroad company has used reasonable care and effort to comply with the law." *St. Louis Merchants' Bridge Terminal R. Co. v. Schuerman*, (C. C. A. 8th Cir. 1916) 237 Fed. 1, 150 C. C. A. 203.

Handbrakes.—The statute is mandatory in requiring that the trains must not only be equipped to run, but must actually be run without requiring brakemen to use the hand brakes in the ordinary movement of the trains. *Great Northern R. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 406, 57 C. C. A. 32; *U. S. v. Great Northern R. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 927, 144 C. C. A. 209, *citing* *U. S. v. Grand Rapids, etc., Ry.*, (E. D. Mich. 1916) 244 Fed. 609.

Action by injured employee.—*In general.*—None of the Safety Appliance Acts contain express language conferring a right of action for the death or injury of an employee; but the safety of employees and travelers is their principal object, and the right of private action by an injured employee, even without the Employers' Liability Act, has never been doubted. *Texas, etc., R. Co. v. Rigsby*, (1916) 241 U. S. 33, 36 S. Ct. 482, 60 U. S. (L. ed.) 874, *affirming* (C. C. A. 5th Cir. 1915) 222 Fed. 221, 138 C. C. A. 51.

Pleading.—A denial that the Safety Appliance Act mentioned in the complaint was violated by the railroad company is but a conclusion of the pleader, to be disregarded if the antecedent specific averments of the answer were not denials of the material averments of the plaintiff's complaint. *Great Northern R. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 406, 157 C. C. A. 32; *U. S. v. Great*

Northern R. Co., (C. C. A. 9th Cir. 1916) 229 Fed. 927, 144 C. C. A. 209.

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"Used in moving interstate traffic."—The test of the application of the Safety Appliance Act is the use of such car on a railroad which is a highway of interstate commerce and not its actual use at the time in moving interstate traffic; and the car and not the train is the unit in determining the application of the Act; and a switching operation moving interstate cars may be within its application. *Hurley v. Illinois Cent. R. Co.*, (1916) 133 Minn. 101, 157 N. W. 1005.

Automatic coupling and uncoupling apparatus.—In *Atlantic City R. Co. v. Parker*, (1916) 242 U. S. 56, 37 S. Ct. 69, 61 U. S. (L. ed.) 150 (*affirming* (1915) 87 N. J. L. 148, 93 Atl. 574), the court said: "If couplers failed to couple automatically upon a straight track it at least may be said that a jury would be warranted in finding that a lateral play so great as to prevent coupling was not needed, and that, in the absence of any explanation believed by them, the failure indicated that the railroad had not fully complied with the law."

Coupling and uncoupling included.—This section applies the test of whether the person operating the coupler is required to go between the ends of the cars to the act of coupling as well as that of uncoupling, and the concluding phrase is applicable to both acts. *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110, *affirming* (Tex. Civ. App. 1914) 166 S. W. 24.

Notwithstanding an interstate carrier complies with the Safety Appliance Act, yet if it operates the cars so that the appliances cannot be used without doing the thing the Act seeks to avoid, i. e., going between the cars, it violates the statute as fully as if it had failed to install the appliances. *Christy v. Wabash R. Co.*, (1916) 195 Mo. App. 232, 191 S. W. 241.

Duty to "equip" and maintain as absolute.—By the Safety Appliance Acts it is made unlawful for any common carrier engaged in interstate commerce by railroad to haul on its line any car not equipped with automatic couplers capable of being coupled and uncoupled without the necessity of a man going between the ends of the cars. The liability for failure to obey this provision is absolute, and not dependent upon lack of reasonable care. *Pennsylvania Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming* (N. D. Ohio 1915) 237 Fed. 471. See to the same effect *San Antonio, etc., Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110; *Noel v. Quincy, etc., R. Co.*, (Mo. App. 1915) 182 S. W. 787.

To whom duty to equip is owed.—In *Louisville, etc., R. Co. v. Layton*, (1917) 243 U. S. 617, 37 S. Ct. 456, 61 U. S. (L. ed.) 931, *affirming* (1916) 145 Ga. 886, 90 S. E. 53, the court said: "The language of the acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being made unlawful to use cars not equipped as required,—not from the position the employee may be in or the work which he may be doing at the moment when he is injured. This effect can be given to the acts and their wise and humane purpose can be accomplished only by holding, as we do, that carriers are liable to employees in damages whenever the failure to obey these safety appliance laws is the proximate cause of injury to them when engaged in the discharge of duty."

Duty of employees to use couplers.—Where freight cars were equipped with automatic couplers, so as to couple by impact, as required by this section, a brakeman, who, after failing to recouple cars by the automatic coupler, went between moving cars to attempt to recouple them with his hands, when there was no necessity or circumstance that made it his duty to try such an unsafe method of work, and whose foot caught in a guard rail and held him, where he was run over and injured, was guilty of contributory negligence defeating his recovery. *Swasey v. Maine Cent. R. Co.*, (1916) 115 Me. 215, 98 Atl. 706.

Civil action—Sufficiency of evidence.—A violation of the federal Safety Appliance Act may be established by proof that repeated efforts to work the lever of an automatic coupler, in the manner it is designed to be worked by switchmen in railroad operations, failed to lift the coupling pin. *Davis v. Minneapolis, etc., R. Co.*, (1916) 134 Minn. 369, 159 N. W. 802.

In a suit in damages for injuries resulting in the death of plaintiff's intestate, on the ground that defendant, an interstate carrier, had been negligent, in that it used upon its lines certain freight cars not equipped with couplers coupling automatically by impact, and that deceased, an employee of defendant, was killed while attempting to couple said cars, the evidence reasonably tended to prove that the cars did not couple automatically by impact, and by reason thereof deceased was caught between them and killed. It was held that this was sufficient to take to the jury the question of the primary negligence of defendant. It was held further, that the Act took away from defendant the defense of assumption of risk by deceased. *Chicago, etc., R. Co. v. Ray*, (Okla. 1917) 168 Pac. 999.

Where there was evidence showing that respondent made several efforts to work

the coupler in the manner contemplated by such Act and that the coupler failed to work, this evidence was ample to support a finding that the appellant had failed to comply with the provisions of the section. *Fletcher v. South Dakota Cent. R. Co.*, (1915) 36 S. D. 401, 155 N. W. 3.

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Duty of connecting carrier to accept.—"We find nothing either in the Safety Appliance Acts or in any rule of the common law, which requires a carrier to accept from a connecting line a car equipped in violation of the Safety Appliance Act; and we are of opinion that it is both the right and duty of a carrier to refuse to accept such defective car in interchange when such acceptance would necessarily involve its own use of such car in violation of these Acts. . . . In our opinion, in case a defective car is received from a connecting carrier in a string or train of cars, the mere incidental handling of such car by the receiving carrier, refusing to accept it, in such manner as may be necessary to disconnect it from the other cars for redelivery to the connecting carrier and to proceed with the use of the other cars, would not be a use or hauling of such defective car by the receiving carrier which would subject it to the penalties of the Act; such incidental handling of the car not being in contravention of the purposes of the Act, but a necessary step in furtherance thereof." *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 420, 155 C. C. A. 196.

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Equivalents for the appliances required by the Safety Appliance Acts are not allowed. *St. Joseph, etc., R. Co. v. Moore*, (1917) 243 U. S. 311, 37 S. Ct. 278, 61 U. S. (L. ed.) 741 (*affirming* (1916) 268 Mo. 31, 186 S. W. 1035). See also *Moore v. St. Joseph, etc., R. Co.*, (1916) 268 Mo. 31, 186 S. W. 1035; *Lemee v. Texas, etc., R. Co.*, (1917) 141 La. 769, 75 So. 676.

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"Permitting to be hauled."—"The duty of carriers to exclude the use on their lines of defective equipment is absolute, and not limited to the exercise of reasonable care for the purpose, and that the question of knowledge of such defects is wholly immaterial." *U. S. v. Northwestern Pac. R. Co.*, (N. D. Cal. 1916) 235 Fed. 965.

The proviso.—The fact that cars are being used for the transportation of logs is not enough to bring them within the terms of the proviso. The statute excludes only "standard logging cars where the height of such car from top of rail

to center of coupling does not exceed 25 inches." *U. S. v. Northwestern Pac. R. Co.*, (N. D. Cal. 1916) 235 Fed. 965. See also *Mathis v. Kansas City Southern R. Co.*, (1917) 140 La. 855, 74 So. 172.

Due diligence as defense.—"The suggestion is made in argument that in any event the railroad company was not liable for the penalties because of the difficulty of equipping the twelve cars with grabirons which would not interfere with the lateral movements of the radial couplers and because the other three cars were so constructed that they could not be provided with automatic couplers and were used only on the one day because of unusually heavy traffic. But this merely asserts that the statute may be violated with impunity if only the railroad finds its provisions onerous or deems it expedient to do so." *Spokane, etc., R. Co. v. U. S.*, (1916) 241 U. S. 344, 36 S. Ct. 668, 60 U. S. (L. ed.) 1037, *affirming* (C. C. A. 9th Cir. 1914) 210 Fed. 243, 127 C. C. A. 61, L. R. A. 1917A 558.

Pleading.—A denial that the Safety Appliance Acts mentioned in the complaint were violated by the railroad company is but a conclusion of the pleader, to be disregarded if the antecedent specific averments of the answer were not denials of the material averments of the plaintiff's complaint. *Great Northern R. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 406, 157 C. C. A. 32; *U. S. v. Great Northern R. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 927, 144 C. C. A. 209.

Expert testimony.—In *Spokane, etc., R. Co. v. U. S.*, (1916) 241 U. S. 344, 36 S. Ct. 668, 60 U. S. (L. ed.) 1037, *affirming* (C. C. A. 9th Cir. 1914) 210 Fed. 243, 127 C. C. A. 61, L. R. A. 1917A 558, "it was claimed that the requirements of the Safety Appliance Act with respect to handholds and grabirons were in substance complied with by a different and what was asserted to be an equivalent appliance, that is, openings in the top of the buffer or sill extending across the ends of the cars just above the couplers. To support this claim the company offered testimony of experienced railroad men to the effect 'that the handholds or grabirons in the buffers or sills of such cars were sufficient to protect men who might be required to go between the cars in coupling or otherwise handling them, that they were sufficient to accomplish purposes intended to be accomplished by the provisions of the Safety Appliance Act requiring handholds and grabirons to be placed upon the ends of cars used in interstate commerce, and that they were better than those commonly used upon cars engaged in interstate commerce.' The United States objected to the introduction of the testimony and it was excluded on the ground 'that it was not a question for expert testimony, but was a matter of common knowledge.' During

the trial (at whose request it does not appear) the jury were taken to inspect the openings in some of the cars." It was held on error that the action of the trial judge was proper.

Vol. VI, p. 756, sec. 8.

Effect of section.—"An employee injured by any car in use contrary to the provisions of the [Safety Appliance] act is not to be deemed to have assumed the risk, although continuing in the employment of the carrier after the unlawful use of the car has been brought to his knowledge." *Texas, etc., R. Co. v. Rigsby*, (1916) 241 U. S. 33, 36 S. Ct. 482, 60 U. S. (L. ed.) 874, *affirming* (C. C. A. 5th Cir. 1915) 222 Fed. 221, 138 C. C. A. 51.

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In general.—The Safety Appliance Acts of Congress embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce. *Lemee v. Texas, etc., R. Co.*, (1917) 141 La. 769, 75 So. 676.

Application to employee not engaged in interstate commerce.—The Safety Appliance Acts are applicable to all employees who are injured through a violation of its provisions, irrespective of the character of the commerce in which they are engaged, and the Acts are not unconstitutional as so construed, for "the right of private action by an employee injured while engaged in duties unconnected with interstate commerce, but injured through a defect in a safety appliance required by the Act of Congress to be made secure, has so intimate a relation to the operation of the Act as a regulation of commerce between the states that it is within the constitutional grant of authority over that subject." *Texas, etc., R. Co. v. Rigsby*, (1916) 241 U. S. 33, 36 S. Ct. 482, 60 U. S. (L. ed.) 874, *affirming* (C. C. A. 5th Cir. 1915) 222 Fed. 221, 138 C. C. A. 51, and *following* *Southern R. Co. v. U. S.*, (1911) 222 U. S. 20, 32 S. Ct. 2, 56 U. S. (L. ed.) 72.

"Train."—In *Pennsylvania Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming* (N. D. Ohio 1915) 237 Fed. 471, it was held that the train brake provision of the Safety Appliance Acts applied to "all trains" and to all cars "used on the railroad engaged in interstate commerce" and included a "hospital" train of thirty-four empty bad-order cars, not equipped with automatic couplers operating automatically, and all but one fastened to the other cars by means of chains, together with an engine tender and caboose.

"Locomotives"—*Couplers.*—This Act requires locomotives to be equipped with

automatic couplers. *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110, *affirming* (Tex. Civ. App. 1914) 166 S. W. 24, and *following Johnson v. Southern Pac. Co.*, (1904) 196 U. S. 1, 25 S. Ct. 158, 49 U. S. (L. ed.) 363.

Intrastate cars.—This amendment enlarged the scope of the original Act so as to embrace all locomotives, cars, and similar vehicles used on any railway that is a highway of interstate commerce, whether the particular vehicles are at the time employed in interstate commerce or not. *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110, *affirming* (Tex. Civ. App. 1914) 166 S. W. 24; *Southern R. Co. v. Indiana R. Commission*, (1915) 236 U. S. 439, 35 S. Ct. 304, 59 U. S. (L. ed.) 661, *affirming* (1913) 179 Ind. 23, 100 N. E. 337; *Louisville, etc., R. Co. v. Layton*, (1916) 145 Ga. 886, 90 S. E. 53. Congress had the power, under the commerce clause of the federal Constitution, to require, as it did in the Safety Appliance Act of March 2, 1893, as amended by this Act, that all locomotives, cars, and similar vehicles used on any railway engaged in interstate commerce, shall be equipped with certain designated safety appliances, regardless of whether such vehicles are used in moving intrastate or interstate traffic. *Southern R. Co. v. U. S.*, (1911) 222 U. S. 20, 32 S. Ct. 2, 56 U. S. (L. ed.) 72, *affirming* (N. D. Ala. 1908) 164 Fed. 347; *Curran v. Chicago Short Line R. Co.*, (1916) 198 Ill. App. 154.

"Similar vehicles" includes trains drawn by electric motors, and an interstate electric road is within the provisions of this section though its terminals run over street railways. *Spokane, etc., R. Co. v. Campbell*, (1916) 241 U. S. 497, 36 S. Ct. 683, 60 U. S. (L. ed.) 1125, *affirming* (C. C. A. 9th Cir. 1914) 217 Fed. 518, 133 C. C. A. 370.

What constitutes "used" — Switching operations.—The Safety Appliance Act applies where a switching crew is making up cars in a railroad yard for immediate transportation out of the state; the tracks of the yard being used to make up and transfer interstate cars, and in general for interstate transportation; the couplers on the interstate cars moved at the time in the process of transfer being defective. *Hurley v. Illinois Cent. R. Co.*, (1916) 133 Minn. 101, 157 N. W. 1005.

"Used upon street railways."—The quoted words were not meant to cover cars which were regularly used in interstate commerce on a standard gauge track, but at the terminals were operated over street railways. *Spokane, etc., R. Co. v. U. S.*, (1916) 241 U. S. 344, 36 S. Ct. 668, 60 U. S. (L. ed.) 1037, *affirming* (C. C. A. 9th Cir. 1914) 210 Fed. 243, 127 C. C. A.

61, L. R. A. 1917A 558, (E. D. Wash. 1912) 206 Fed. 988.

Trolley cars operated singly are not subject to the provisions of the Safety Appliance Acts regarding automatic couplers. *International R. Co. v. U. S.*, (C. C. A. 2d Cir. 1916) 238 Fed. 317, 151 C. C. A. 333.

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"The undisputed facts upon which the second count of the declaration is based are briefly as follows: The defendant, on the date above named, moved a train or 'drag' of 55 cars from the Fulton yard in Richmond, over the main line of its railway, to the Albemarle paper plant, a distance of about two miles. In making this movement the automatic brakes were coupled up and in use only on the first 12 cars of the train, but not coupled up and used on the other 43 cars. This operation was what is known as a 'transfer'; that is, the movement of a considerable number of cars coupled together from the Fulton yard, where trains were broken up, to the Second Street yard, where they were sorted out for delivery to other yards and sidings in the city. The cars so associated for this purpose are called a 'drag,' as no caboose is attached and the cars are hauled by a transfer engine.

"At the time this movement took place the Safety Appliance Law, as modified by an authorized order of the Interstate Commerce Commission, required that any train operated with power or train brakes should have such brakes used and operated on not less than 85 per cent. of the cars composing such train, which concededly was not done in this instance. The defendant, however, contended that this requirement did not apply to the hauling of a train or 'drag' of cars in transfers service, and therefore the facts shown did not charge it with liability. The trial court overruled this contention, and the jury under instructions found a verdict for the government. The correctness of this ruling has lately and since this case was argued, been fully upheld by two decisions of the Supreme Court. *U. S. v. Erie R. Co.*, [1915] 237 U. S. 402, 35 S. Ct. 621, 59 U. S. (L. ed.) 1019, and *U. S. v. Chicago, etc., R. Co.*, [1915] 237 U. S. 410, 35 S. Ct. 634, 59 U. S. (L. ed.) 1023, rendered in May, 1915. The case at bar is clearly covered by these decisions, and the question involved is no longer open to discussion." *Chesapeake, etc., R. Co. v. U. S.*, (C. C. A. 4th Cir. 1915) 226 Fed. 683, 141 C. C. A. 439.

1909 Supp., p. 581, sec. 1.

"Any train."—"This act differs in this respect from the Employers' Liability Act. The latter is expressly limited to employees injured 'while engaged in inter-

state business,' while the Hours of Service Act applies to all employes actually engaged in or connected with the movement of any interstate trains, regardless of the fact whether at the time the offense was committed he was so employed." *Denver, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 685, 150 C. C. A. 17.

Work train.—"Any train" includes a work train. *St. Joseph, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 349, 146 C. C. A. 397.

1909 Supp., p. 582, sec. 2.

Purpose of this legislation.—"The purpose of the [Hours of Service] act was to prevent the dangers which must necessarily arise to the employee and to the public from continuing men in a dangerous and hazardous business for periods so long as to render them unfit to give that service which is essential to the protection of themselves and those entrusted to their care. It is common knowledge that the enactment of this legislation was induced by reason of the many casualties in railroad transportation which resulted from requiring the discharge of arduous duties by tired and exhausted men whose power of service and energy had been so weakened by overwork as to render them inattentive to duty or incapable of discharging the responsible labors of their positions." *Atchison, etc., R. Co. v. U. S.*, (1917) 244 U. S. 336, 37 S. Ct. 635, 61 U. S. (L. ed.) 1175, Ann. Cas. 1918C 794, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 748, 136 C. C. A. 354. To the same effect see *U. S. v. Missouri, etc., R. Co.*, (E. D. Tex. 1917) 241 Fed. 302; *U. S. v. Illinois Cent. R. Co.*, (N. D. Ia. 1915) 234 Fed. 433; *U. S. v. Atchison, etc., R. Co.*, (S. D. Cal. 1915) 236 Fed. 154.

Construction.—The Act is remedial and in the public interest, and should be construed in the light of its humane purpose. *Atchison, etc., R. Co. v. U. S.*, (1917) 244 U. S. 336, 37 S. Ct. 635, 61 U. S. (L. ed.) 1175, Ann. Cas. 1918C 794, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 748, 136 C. C. A. 354; *U. S. v. Pennsylvania R. Co.*, (E. D. Pa. 1917) 239 Fed. 576.

"Although it may be called punitive in so far as it prescribes penalties for its violation, still the primary rule of construction is that which will make the law effectual in its main purpose. The act is analogous to Safety Appliance Act." *Oregon Short Line R. Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 234 Fed. 584, 148 C. C. A. 350, *affirming* (D. C. Idaho 1915) 228 Fed. 561.

"The act is so manifestly in the interests of humanity that it should be liberally construed, and yet, because of the penalties imposed for violations of the act, its provisions should not be extended

beyond their plain meaning. It is highly important that those who may be subjected to penalties for violations of the act should know what acts or omissions may subject them to penalties." *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1917) 239 Fed. 761.

"Officers or agents."—The Act does not operate against carriers alone, but against officers and agents of carriers as well. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1917) 239 Fed. 761.

"Required or permitted."—"Permit" as used in the section does not imply knowledge and consent but in view of the legislative history of the Act is synonymous with "suffer." *Minneapolis, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 240 Fed. 315, 153 C. C. A. 241.

"To require or permit an employe to work ordinarily implies knowledge by the employer, who exacts or consents to the doing of the work. Upon this point reference to the history of the passage of the act is relevant." *Oregon Short Line R. Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 234 Fed. 584, 148 C. C. A. 350, *affirming* (D. C. Idaho 1915) 228 Fed. 561.

Yardmasters whose duty it is to direct train movements by telephone are within the terms of the following provision: "Operator, train dispatcher, or other employe who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements," etc. *U. S. v. Pennsylvania R. Co.*, (E. D. Pa. 1917) 239 Fed. 576.

Switch tenders.—In *Chicago, etc., R. Co. v. U. S.*, (1918) 247 U. S. 197, 38 S. Ct. 442, 62 U. S. (L. ed.) 1066, *affirming* (C. C. A. 7th Cir. 1917) 244 Fed. 945, 157 C. C. A. 295, a switch tender under the facts of the case was held to be within the nine hour limit of the proviso.

Telegraph operators engaged in wrecking or relief service.—"They may not, in a sense, be termed one of the crew of a wrecking or relief train, but they are employes engaged in and about service in connection with the wreck, quite as important as that of any member of the crew proper, and whose work is of an emergency character, and necessarily of uncertain duration. To extend the Act to one so employed would be contrary to the provisions and spirit of the Act, and entirely inconsistent with its manifest purpose and intent." *U. S. v. Baltimore, etc., R. Co.*, (N. D. W. Va. 1915) 226 Fed. 220.

Employees of terminal company.—In *Brooklyn Eastern Dist. Terminal v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 287, 152 C. C. A. 275, which was an action by the United States against the Brooklyn Eastern District Terminal for penalties incurred by violation of the Hours of Service Act, the case was tried on an agreed

statement of facts, which admitted that the Terminal had permitted "several members of switching crews" at their own request, to remain on duty for more than sixteen consecutive hours. There was a judgment for the plaintiff in the District Court which was reversed by the Circuit Court of Appeals on the ground that the terminal was not a "common carrier" but an "agent" of common carriers and that the "employees" within the protection of the Act were employees of common carriers and not of agents of common carriers.

On duty—In general.—The 24-hour period must be counted from the time the operator goes on duty. *U. S. v. Missouri Pac. R. Co.*, (D. C. Colo. 1916) 235 Fed. 944.

Dividing hours of service.—It is permissible for a railroad company to divide the hours of service provided those hours of service do not exceed nine hours in any twenty-four hour period. *U. S. v. Missouri Pac. R. Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 38, 156 C. C. A. 466 (*affirming* (D. C. Colo. 1916) 235 Fed. 944).

"The intention of Congress being apparently that, if the sixteen hours of service is divided, then the period of release affects the time which the employee is entitled to remain off duty at the end of his service." *Minneapolis, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 245 Fed. 60, 157 C. C. A. 356, *affirming* (S. D. Ia. 1916) 236 Fed. 414.

Continuity of service.—In *U. S. v. Southern Pac. Co.*, (C. C. A. 9th Cir. 1917) 245 Fed. 722, 158 C. C. A. 124, it appeared that all freight trains were stopped at a divisional terminal, and train and engine crews were relieved for the length of time of the necessary detention of trains for icing refrigerator cars, and switching, making up, and breaking up of trains, the work being done by others than the train or engine crews. On the question of whether the delay caused a break in the continuity of service the court said: "It will be seen that there was evidence clearly tending to show that although the employees were relieved from duty for periods of one hour, one hour and twenty minutes, or one hour and thirty minutes, as the case might be, the releases were not absolute; that the time limit of the releases, if a time limit was specified, was subject to change; and that the men were required to hold themselves in readiness and to be within reach in case their services were needed at any time within the designated period of the release. A release of such a nature would not, we think, be sufficient to break the continuity of service."

"A release, so as to justify a deduction of time, under the statute, can only be given by some officer or agent having authority to give it." *Denver, etc., R. Co. v.*

U. S., (C. C. A. 8th Cir. 1916) 233 Fed. 62, 147 C. C. A. 132.

Period of rest at end of run out.—Where a train crew made a round trip covering seventeen or eighteen hours altogether, it was held that the fact that there was a stop of from two to three hours at the end of the run out and before the return trip was begun did not break the continuity of the service so as to relieve the railroad company from liability under the Hours of Service Act. *Minneapolis, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 245 Fed. 60, 157 C. C. A. 356 (*affirming* (S. D. Ia. 1916) 236 Fed. 414).

In determining whether engineers and firemen on certain extra freight engines called "pushers" were "continuously on duty" for more than sixteen hours, the question whether rest periods when those employees were waiting for a train in the opposite direction were to be regarded as breaking the continuity of their service, "depended on whether, as a matter of fact, there was during those sixteen hours a substantial break, one that was substantial in amount and recuperative and restful in effect." The mere fact that they were subject to call during those periods, was not decisive that the service was continuous. *Pennsylvania R. Co. v. U. S.*, (C. C. A. 3d Cir. 1917) 246 Fed. 881, 159 C. C. A. 153, where the court said: "The case is one of those border line and exceptional ones."

"No extra crews were kept at Park City, nor was there any occasion to keep them. The journey from Salt Lake City and return was usually made well within the 16-hour period. If the crew had been released from the train at Park City, the company had no person there competent to take charge of the train or the engine. We are, therefore, of the opinion that the round trip must be treated as a continuous journey, and Park City simply as a way station." *Denver, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 233 Fed. 62, 147 C. C. A. 132.

Night and day offices.—In *Illinois Cent. R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 241 Fed. 667, 154 C. C. A. 425 (*affirming* (N. D. Ia. 1915) 234 Fed. 433) one of the questions in issue was whether the facts showed that the defendant railroad company maintained a day and night office at Rockwell City. The court said: "... In the case of Atchison, etc., R. Co. v. U. S., (C. C. A. 8th Cir. 1916) 236 Fed. 908 [150 C. C. A. 168], this court said: 'Obviously the intent of the statute would be defeated if the work at a place of a character requiring attention both day and night were divided between two shifts and performed with separate instruments installed in near proximity. And what could not be done as a new departure would be equally inadmissible

as an old custom.' . . . We think the present case is ruled by the case cited."

Emergency.—"With the context and purpose of the act in mind, it is unreasonable to believe that the ordinary and everyday ups and downs of railroad operation should be considered emergencies. Such a conclusion would bring within its scope a vast multitude of unexpected and unanticipated minor predicaments and contingencies constantly arising. The term emergency as here used is of greater moment than this, though of less significance than the terms used in the third section. The same word may be applied with appropriateness in innumerable instances in a variety of different bearings and relations. So we cannot stop with its abstract meaning. The context determines its particular significance. A definition that would override and defeat the plain purpose of the act must be rejected." *U. S. v. Missouri Pac. R. Co.*, (D. C. Colo. 1916) 235 Fed. 944.

In *Indiana Harbor Belt R. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 943, 157 C. C. A. 293, the facts and conclusions as stated by the court were as follows:

"The railroad crew, consisting of five men in charge of a freight train running from Blue Island to Chicago and return, a distance of 63 miles, and which train was engaged in interstate commerce, was in continuous service for a period varying from 17 hours 5 minutes to 17 hours 35 minutes. In justification for such hours of service the plaintiff in error showed that, by reason of a derailment of a car in a train ahead, there was a delay of 2 hours and 20 minutes.

"The first contention of the plaintiff in error is that delay being of such origin comes within the exception of section 3 of the act, and the maximum period of 16 hours was thereby automatically extended 2 hours and 20 minutes. This position must be rejected upon the authority of" cases cited, including *Chicago, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 234 Fed. 268, 148 C. C. A. 170, and *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 243 Fed. 153, 156 C. C. A. 19.

Exception and not proviso.—"A form of the statute is somewhat peculiar. While the provision regarding the hours of service of telegraph and telephone operators is found in a proviso, it is really an enactment of what ordinarily would be found in an independent section, dealing with a class of employes, and a service, separate and distinct from those coming within the preceding clause of section 2 of the act. This is not material, except as it affects a rule invoked in the construction of statutes and applied in pleading. That the term 'in cases of emergency' constitutes an exception and

not a proviso is manifest from an examination of section 3 of the statute. Treating the dispensing or exemptive term as an exception, the rule of construction is well settled." *U. S. v. Atlantic Coast Line Co.*, (E. D. N. C. 1915) 224 Fed. 160.

The liability of a railroad for injuries resulting to an employee is not, where a violation of the Hours of Service Act is relied on, limited to injuries happening while the violation of law is going on, "and as to the ten hours the statute fixes only a minimum and a minimum for rest after work no longer than allowed." *Baltimore, etc., R. Co. v. Wilson*, (1916) 242 U. S. 295, 37 S. Ct. 123, 61 U. S. (L. ed.) 312.

1909 Supp., p. 583, sec. 3.

Telegraphers.—The proviso applies to all employees affected by the acts and includes telegraphers. *U. S. v. Delano*, (C. C. A. 7th Cir. 1917) 246 Fed. 107, 158 C. C. A. 333; *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 243 Fed. 153, 156 C. C. A. 19.

Excuses for excess of service.—*In general.*—The language here used is broad and comprehensive. It is not a mere limitation or restriction on the enforcement of the Act, but it excepts absolutely from the operation of the law situations such as are described in the proviso. *U. S. v. Missouri, etc., R. Co.*, (E. D. Tex. 1917) 241 Fed. 302.

"The statute fixes a duty upon the defendant not to permit its servants engaged in running trains to work more than 16 consecutive hours. If it does, then the penalty is incurred, unless it can excuse itself by alleging and proving one of the causes contained in section 3 of the act." *U. S. v. Charlotte Harbor, etc., R. Co.*, (S. D. Fla. 1917) 243 Fed. 772.

Proviso as relieving carrier from exercise of diligence.—"It was not the intention of the proviso . . . to relieve the carrier from the exercise of diligence to comply with the general provisions of the act, but only to relieve it from accidents arising from unknown causes which necessarily entailed overtime employment and service. *U. S. v. Dickson*, [1841] 15 Pet. 141, [10 U. S. (L. ed.) 689]. It is still the duty of the carrier to do all reasonably within its power to limit the hours of service in accordance with the requirements of the law." *Atchison, etc., R. Co. v. U. S.*, (1917) 244 U. S. 336, 37 S. Ct. 635, 61 U. S. (L. ed.) 1175, Ann. Cas. 1918C 794, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 748, 136 C. C. A. 354. See to the same effect *Denver, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 233 Fed. 62, 147 C. C. A. 132.

Even if the sudden and unexpected illness of a telegraph operator were to be regarded as a "casualty," the railroad company was not excused where it failed

to exercise a high degree of diligence after learning of such illness. *U. S. v. Delano*, (C. C. A. 7th Cir. 1917) 246 Fed. 107, 158 C. C. A. 333.

Insubordination of employee.—"We think the trial court properly held that the unforeseen insubordination of this employé was a casualty within the meaning of the statute. In *U. S. v. Denver, etc., R. Co.*, [C. C. A. 8th Cir. 1915] 220 Fed. 293, 136 C. C. A. 275, we held that insubordination of an employé may constitute an 'emergency,' within the meaning of section 2 of the statute, justifying the retention of a telegraph operator overtime. No sound reason can be given why similar insubordination does not constitute a 'casualty,' within the proviso of section 3." *Denver, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1916) 233 Fed. 62, 147 C. C. A. 132.

Defect in steam pump.—See *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 243 Fed. 153, 156 C. C. A. 19, affirming judgment for the government in an action for penalty.

Derailment of trains.—"The pleas under discussion are silent as to the cause of derailment, and if such derailment could have been avoided by ordinary foresight the accident could not be said to be unavoidable, and unless it was unavoidable it is no defense to the action brought. I am therefore of opinion that the demurrers to these pleas are well taken, and should be sustained." *U. S. v. Charlotte Harbor, etc., R. Co.*, (S. D. Fla. 1917) 243 Fed. 772.

Delay result of cause not foreseen.—"It is not unlikely that Congress had in mind conditions such as existed by reason of the Johnstown flood in this district where operations over the main line of the Pennsylvania Railroad were suspended for days, due to the washing out of bridges. If such a flood should again occur, it could not be imagined that a train dispatcher would be subject to the penalties of this act if, after having knowledge of the flood, he would send out a train for Johnstown and intermediate places, where the crew of said train were required to be on duty longer than 16 hours." *U. S. v. Pennsylvania R. Co.*, (W. D. Pa. 1917) 239 Fed. 761.

Train delay.—In the practical operation of its road, the carrier is bound to anticipate such frequent occurrences as ordinary delays of trains. *Atchison, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 243 Fed. 114, 155 C. C. A. 644. And a delay in starting a train caused by reason of the fact that another train is late is not necessarily an excuse within the meaning of the proviso. *U. S. v. Kansas City Southern Ry. Co.*, (W. D. Ark. 1911) 189 Fed. 471.

But although a train dispatcher permitted a train to leave a terminal after having knowledge that a derailed train

blocked the road over which it had to go to reach its destination such fact did not make the railroad company liable for a violation of the Hours of Service Act in respect of the crew on the train if dispatcher was informed by the conductor of the derailed train that the track would be cleared of the wreck in an hour. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1917) 239 Fed. 761.

In *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 1, 154 C. C. A. 593, a judgment against the railroad was reversed and a new trial awarded because of error in the trial judge's charge to the jury. The facts showed that a train crew was kept at work more than sixteen hours by virtue of the train being delayed by weather and a broken knuckle.

Continuance on duty to end of run.—In case of an unavoidable accident delaying the movement of a train to the extent of causing the train crew to remain on duty beyond the period made ordinarily lawful under the Hours of Service Act provided it takes the train to the terminal, it is the duty of the railroad to substitute a new crew if in the exercise of diligence that can be done. *Atchison, etc., R. Co. v. U. S.*, (1917) 244 U. S. 336, 37 S. Ct. 635, 61 U. S. (L. ed.) 175, Ann. Cas. 1918C 794, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 748, 136 C. C. A. 354.

Where a train is held up by the derailment of a train ahead the railroad company is not obliged to relieve the train crew at the first convenient stopping place reached after the expiration of the 16-hour period but may keep them on the train until its destination is reached. *U. S. v. Missouri, etc., R. Co.*, (E. D. Tex. 1917) 241 Fed. 302.

Evidence.—*The burden of proof* is on the defendant to show that the cause of the excess service of the train crew comes within the terms of the proviso. *Atchison, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 243 Fed. 114, 155 C. C. A. 644.

Similar accidents.—Where a railroad company relies on two accidents as a defense to permitting a train crew to work longer than the Hours of Service Act allowed, evidence of many similar accidents immediately preceding these accidents was admissible as tending to show a negligent habit of the company. *Atchison, etc., R. Co. v. U. S.*, (C. C. A. 8th Cir. 1917) 243 Fed. 114, 155 C. C. A. 644, *following* *U. S. v. Great Northern R. Co.*, (C. C. A. 7th Cir. 1915) 220 Fed. 630, 136 C. C. A. 238.

The action to recover a penalty under this Act is a civil one and the question of costs and disbursements must be decided upon the same principles as are involved in other civil actions. *U. S. v. Minneapolis, etc., R. Co.*, (D. C. Minn. 1916) 235 Fed. 951.

1909 Supp., p. 584, sec. 4.

In *U. S. v. Northern Pac. R. Co.*, (1916) 242 U. S. 190, 37 S. Ct. 22, 61 U. S. (L. ed.) 240 (*affirming* (C. C. A. 8th Cir. 1914) 213 Fed. 162, 129 C. C. A. 514, L. R. A. 1917A 1198), which was a civil proceeding against the railroad company to recover a penalty under section 20 of the Act to Regulate Commerce as amended June 18, 1910 (see vol. IV, p. 499), for a failure to include in a report certain alleged violations of the Hours of Service Act as required by an order of the Commission, it was held that the judgment for the defendant in the court below was proper, it appearing that the omissions were the result of an honest mistake in a doubtful case. See also *Elgin, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1915) 227 Fed. 411, 142 C. C. A. 107.

In *U. S. v. Baltimore, etc., R. Co.*, (N. D. W. Va. 1915) 226 Fed. 220, wherein it was alleged that the defendant failed and refused to make proper reports to the Interstate Commerce Commission, within 30 days of the dates aforesaid of the excess time required of telegraph operators in its employ with the reasons therefor, as required by law, the court said: "The case thus stated presents two legal questions for determination, namely, whether the defendant is required to make report of extra service hours where the same does not exceed more than 4 hours in each day of 24 hours for 3 days in a week, and whether the report of extra hours is required where telegraph operators are engaged at a wreck." The first question was answered in the affirmative and the second in the negative.

1909 Supp., p. 584, sec. 1.

I. INTRODUCTORY.

"The first Employers' Liability Act . . . extended in terms to all common carriers engaged in interstate or foreign commerce, and because it embraced subjects not within the constitutional authority of Congress was declared invalid." *Southern Pac. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451, *reversing* (1915) 215 N. Y. 514, 109 N. E. 600, Ann. Cas. 1916B 276, L. R. A. 1916A 403.

The Safety Appliance Act and the Employers' Liability Act "are in pari materia, and where the Employers' Liability Act refers to 'any defect or insufficiency, due to its negligence, in its cars, engines, appliances,' etc., it clearly is the legislative intent to treat a violation of the Safety Appliance Act as 'negligence'—what is sometimes called negligence per se." *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110. But this Act defines

the rights of employees in cases of injury due to the negligence of a carrier engaged in interstate commerce and recovery depends thereon and not on the Safety Appliance Act. *Aldread v. Northern Pac. R. Co.*, (1916) 93 Wash. 209, 160 Pac. 429.

"The Act is a remedial one, and, like all remedial legislation, should have a liberal construction to advance the remedy proposed and to correct the evils against which it was directed. It was designed to enlarge—not to restrict—the rights of the injured workmen." *Baltimore, etc., R. Co. v. Branson*, (1916) 128 Md. 678, 98 Atl. 225.

"The opinion of the Supreme Court of the United States construing the Employers' Liability Act, or other Acts of Congress, is controlling not only upon the federal courts, but the state courts as well upon the construction and interpretation of the laws of Congress." *Walker v. Iowa Cent. R. Co.*, (S. D. Ia. 1917) 241 Fed. 395.

Paramount to state laws—*In general.*

—"It is therefore not disputable that recovery under the act can be had alone in the mode and by and for the persons or class of persons in whose favor the law creates and bestows a right of action." *Seaboard Air Line Ry. v. Kenney*, (1916) 240 U. S. 489, 36 S. Ct. 458, 60 U. S. (L. ed.) 762.

"The federal Employers' Liability Act of 1908 supersedes the laws of the states upon all matters within its scope, and in cases involving accidents to the employees of railroad companies when engaged in interstate commerce the state laws must be regarded as nonexistent." *Hogarty v. Philadelphia, etc., R. Co.*, (1916) 255 Pa. St. 236, 99 Atl. 741. To the same point see *Seaboard Air Line R. Co. v. Hess*, (Fla. 1917) 74 So. 500; *Landrum v. Western, etc., R. Co.*, (1916) 146 Ga. 88, 90 S. E. 710; *Carlson v. Chicago Great Western R. Co.*, (1917) 205 Ill. App. 156; *New Orleans, etc., R. Co. v. Jones*, (1916) 111 Miss. 852, 72 So. 681; *Chicago, etc., R. Co. v. De Bord*, (Tex. 1917) 192 S. W. 767; *Geer v. St. Louis, etc., R. Co.*, (Tex. 1917) 194 S. W. 939.

"The federal Employers' Liability Act is the supreme and paramount law of the land with respect to the liability of interstate carriers by rail for injuries to or the death of employees while engaged in interstate commerce." *Louisville, etc., R. Co. v. Rhoda*, (Fla. 1917) 74 So. 19.

"Plaintiff being at the time of the accident engaged in the repair of cars employed solely in interstate commerce, his rights must be determined in accordance with the laws of the United States, and not of this state, or of the state of Minnesota in which the accident occurred." *Smiegl v. Great Northern R. Co.*, (1917) 165 Wis. 57, 160 N. W. 1057.

State common law.—"If it is a case wherein relief may be properly had under the federal Act, it supersedes the common law of the states and any recovery . . . must necessarily be based upon the federal act." *Cincinnati, etc., R. Co. v. Clarke*, (1916) 169 Ky. 662, 185 S. W. 94.

Common law of parent and child.—The common-law right of a father to recover for loss of services caused by an injury to his infant son, while the latter was employed in interstate commerce by a railroad common carrier was taken away by this Act. *New York Cent., etc., R. Co. v. Tonsellito*, (1917) 244 U. S. 360, 37 S. Ct. 620, 61 U. S. (L. ed.) 1194.

State statutes, in general.—"The federal law is exclusive within the scope of its operation. It is the same as though it were a part of the state law, and it supersedes and takes the place of all state statutes within its scope and field." *Grand Trunk Western R. Co. v. Thrift Trust Co.*, (Ind. App. 1917) 115 N. E. 685. To the same point see *Geer v. St. Louis, etc., R. Co.*, (Tex. 1917) 194 S. W. 939; *McCutcheon v. Chicago, etc., R. Co.*, (Ia. 1917) 164 N. W. 774.

A state statute forbidding the employment of minors under eighteen between certain hours in the night can have no effect even as a state police regulation to aid in recovery by a minor under eighteen injured while employed in violation of that statute in interstate commerce covered by the federal statute. *Smithson v. Atchison, etc., R. Co.*, (1916) 174 Cal. 148, 162 Pac. 111.

A state statute giving the railroad companies the right to "cut down any standing trees that may be in danger of falling on the road" was not superseded by the federal statute. *O'Connor v. Chicago, etc., R. Co.*, (1916) 163 Wis. 653, 158 N. W. 343.

State Employers' Liability Acts.—"It is settled that if an employee of a railroad suffers injury or death while engaged in interstate commerce, recovery cannot be had under a state statute for such injury or death, but that the exclusive remedy is under the federal Employers' Liability Act. As was said in *St. Louis, etc., R. Co. v. Seale*, [1913] 229 U. S. 156 at page 158, 33 S. Ct. 651 at page 652, 57 U. S. (L. ed.) 1129, Ann. Cas. 1914C 156: 'If the federal statute was applicable, the statute was excluded by reason of the supremacy of the former under the national Constitution.'" *Lynch v. Boston, etc., R. Co.*, (1917) 227 Mass. 123, 116 N. E. 401.

Where a state statute relating to an employer's liability for an injury to an employee is so similar to that of the United States that the liability of the employer does not appear to be affected by the question which of them governs the case it is unnecessary for the United

States Supreme Court to decide which law applies. *Kansas City Western R. Co. v. McAdow*, (1916) 240 U. S. 51, 36 S. Ct. 252, 60 U. S. (L. ed.) 520.

A state statute giving a right of action for death is excluded from operation where the facts of a case bring it within the federal statute. *Denver, etc., R. Co. v. Wilson*, (1917) 62 Colo. 492, 163 Pac. 857; *Sells v. Atchison, etc., R. Co.*, (1915) 266 Mo. 155, 181 S. W. 106.

State Workmen's Compensation Acts.—An employee of a railroad common carrier injured while engaged in interstate commerce, though without any negligence on the part of the carrier, cannot recover under a state Workmen's Compensation Act. *New York Cent. R. Co. v. Winfield*, (1917) 244 U. S. 147, 37 S. Ct. 546, 61 U. S. (L. ed.) 1045, Ann. Cas. 1917D 1139, L. R. A. 1918C 439, reversing (1915) 216 N. Y. 284, 110 N. E. 614, Ann. Cas. 1916A 817, (1915) 168 App. Div. 351, 153 N. Y. S. 499; *Erie R. Co. v. Winfield*, (1917) 244 U. S. 170, 37 S. Ct. 556, 61 U. S. (L. ed.) 1057, Ann. Cas. 1918B 662, reversing (1916) 88 N. J. L. 619, 96 Atl. 394; *Walker v. Chicago, etc., R. Co.*, (Ind. App. 1917) 117 N. E. 969. To the same effect see *Grand Trunk R. Co. v. Knapp*, (C. C. A. 6th Cir. 1916) 233 Fed. 950, 147 C. C. A. 624; *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298; *Chicago Junction R. Co. v. Industrial Board*, (1917) 277 Ill. 512, 115 N. E. 647; *Dickinson v. Industrial Board*, (1917) 280 Ill. 342, 117 N. E. 438; *Flynn v. New York, etc., R. Co.*, (1917) 90 N. J. L. 450, 101 Atl. 1034; *Rounsaville v. Central R. Co.*, (1917) 90 N. J. L. 176, 101 Atl. 182.

The decisions by the federal Supreme Court cited in the last preceding paragraph overruled not only the New Jersey case cited in the opinion, but in effect overrules as to state Workmen's Compensation Acts, *Rounsaville v. Central R. Co.*, (1915) 87 N. J. L. 371, 94 Atl. 392; *West Jersey Trust Co. v. Philadelphia, etc., R. Co.*, (1915) 88 N. J. L. 102, 95 Atl. 753; *Corico v. Smith*, (1916) 97 Misc. 447, 161 N. Y. S. 293.

But the federal Employers' Liability Act does not prevent the operation of a state Workmen's Compensation Act in respect of injuries suffered by one not at the time employed in interstate commerce, within the decisions construing and applying the federal statute, even though he was at the time employed by a railroad company which was, in a general sense, engaged in interstate commerce. *Raymond v. Chicago, etc., R. Co.*, (1917) 243 U. S. 43, 37 S. Ct. 268, 61 U. S. (L. ed.) 583; *New York Cent. R. Co. v. White*, (1917) 243 U. S. 188, 37 S. Ct. 247, 61 U. S. (L. ed.) 667, Ann. Cas. 1917D 629, L. R. A. 1917D 1. See also *Okrzesz v. Lehigh Valley R. Co.*,

(1915) 170 App. Div. 15, 155 N. Y. S. 919.

A judgment against plaintiff in a suit brought on the federal Employers' Liability Act, on the ground that the party injured was not employed in interstate commerce at the time of the injury, is no bar to proceeding under the state Workmen's Compensation Act. *Jackson v. Industrial Board*, (1917) 280 Ill. 526, 117 N. E. 705, holding that such judgment, though rendered on defendant's demurrer, concluded the defendant as to the question of the character of plaintiff's employment involved in the judgment.

II. EMPLOYER ENGAGED IN INTERSTATE COMMERCE

In general.—The federal Employers' Liability Act extends only to railroads, and so an employee injured while unloading a vessel does not come within the Act although the vessel is owned by an interstate railroad. *Southern Pac. R. Co. v. Jensen*, (1917) 244 U. S. 205; 37 S. Ct. 524, 61 U. S. (L. ed.) 1083, Ann. Cas. 1917E 900, L. R. A. 1918C 451, reversing (1915) 215 N. Y. 514, 109 N. E. 600, Ann. Cas. 1916B 276, L. R. A. 1916A 403.

A railroad owned and operated by a lumber company for the transportation of logs from the forests to a tidewater point within the same state is not engaged in interstate commerce and an employee injured while working for such a road cannot maintain an action under the federal Employers' Liability Act, and this is true though the logs after being sold at the tidewater point are transported by the purchasers beyond the limits of the state. *McCluskey v. Marysville, etc., R. Co.*, (1917) 243 U. S. 36, 37 S. Ct. 374, 61 U. S. (L. ed.) 578, affirming (C. C. A. 9th Cir. 1914) 218 Fed. 737, 134 C. C. A. 415; *Bay v. Merrill, etc., Logging Co.*, (1917) 243 U. S. 40, 37 S. Ct. 376, 61 U. S. (L. ed.) 580, affirming (C. C. A. 9th Cir. 1915) 220 Fed. 295, 136 C. C. A. 277.

The right to recover under the Act arises only where the injury is suffered by an employee of a carrier engaged in interstate commerce. *Shanks v. Delaware, etc., R. Co.*, (1916) 239 U. S. 556, 36 S. Ct. 188, 60 U. S. (L. ed.) 436, L. R. A. 1916C 797, affirming (1915) 214 N. Y. 413, 108 N. E. 644 Ann. Cas. 1916E 467.

In *Canadian Pac. R. Co. v. Thompson*, (C. C. A. 1st Cir. 1916) 232 Fed. 353, 146 C. C. A. 401, it was held that the Canadian Pacific Railway Company was engaged in interstate commerce at the time of the death of the plaintiff's intestate.

In *McCluskey v. Marysville, etc., R. Co.*, (1917) 243 U. S. 36, 37 S. Ct. 374, 61 U. S. (L. ed.) 578, affirming judgment in (C. C. A. 9th Cir. 1914) 218 Fed. 737, 134 C. C. A. 415, which affirmed judgment in (W. D. Wash. 1914) 211 Fed. 721, dismissing a suit under the federal Em-

ployers' Liability Act, the federal Supreme Court said: "The conclusion of the court below that the defendants were not engaged in interstate or foreign commerce when the accident occurred is, we think, clearly demonstrated by the reasoning by which it sustained its conclusion and the authorities upon which it relied as above stated, and its judgment should be affirmed." This ruling controlled the decision that the defendant was not engaged in interstate or foreign commerce, under substantially the same facts (said the court) in *Bay v. Merrill, etc., Logging Co.*, (1917) 243 U. S. 40, 37 S. Ct. 376, 61 U. S. (L. ed.) 580, affirming (C. C. A. 9th Cir. 1915) 220 Fed. 295, 136 C. C. A. 277.

Traffic agreement with street railroad in another state.—Where it appeared that the defendant, a Kansas corporation, had an electric railway from Leavenworth into Kansas City, Kansas, and a traffic agreement with a street railway company operating street railways in Kansas City, Missouri, it was held that the company was engaged in interstate commerce. *Kansas City Western R. Co. v. McAdow*, (1916) 240 U. S. 51, 36 S. Ct. 252, 60 U. S. (L. ed.) 520, affirming (1914) 192 Mo. App. 540, 164 S. W. 188.

Transportation of mail.—"We think there can be no serious question, in view of the decisions, that the transportation of mail between different states and territories is interstate commerce." *Zenz v. Industrial Acc. Commission*, (Cal. 1917) 168 Pac. 364.

Empty cars.—Only while they have an interstate movement do empty cars have an interstate character, "and such interstate movement ceases when they reach the first distributing point in the state of their destination." *Chicago, etc., R. Co. v. Feightner*, (Ind. App. 1916) 114 N. E. 659.

Electric railway—Federal corporation.—In view of the Acts of Congress incorporating the Washington Railway and Electric Company and the fact that it operated a line of electric railway extending from a terminus within the District of Columbia to a terminus in Maryland, and that it was a common carrier of passengers for hire between its termini, it was held to be a "common carrier by railroad" within the meaning of the Employers' Liability Act. *Washington Ry., etc., Co. v. Scala*, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360, affirming (1916) 45 App. Cas. (D. C.) 484, and holding that the decision in *Omaha, etc., St. R. Co. v. Interstate Commerce Commission*, (1913) 230 U. S. 324, 33 S. Ct. 890, 57 U. S. (L. ed.) 1501, 46 L. R. A. (N. S.) 385, was of negligible value in the determination of this question. See also *Washington R. Co. v. Downey*, (1913) 40 App. Cas. (D. C.) 147.

State corporation.—"An electric railway company which operates an urban car line and also other lines connecting therewith and extending into another state, is both an intrastate and an interstate carrier. But the federal Employers' Liability Act does not apply in the case of injury to a servant of such company, who is operating a street car, confined to the urban lines and not, at the time of the injury, carrying interstate passengers or traffic." *Watts v. Ohio Valley Electric R. Co.*, (1916) 78 W. Va. 144, 88 S. E. 659.

An interurban electric railway operated entirely within the state may be engaged in interstate commerce. *Cholerton v. Detroit, etc., Ry.*, (Mich. 1917) 165 N. W. 606.

Vessel owned by railroad.—In *Southern Pac. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451, reversing on other grounds (1915) 215 N. Y. 514, 109 N. E. 600, Ann. Cas. 1916B 276, L. R. A. 1916A 403, the Southern Pacific Company, a Kentucky corporation, owned and operated a railroad as a common carrier, and also the steamship *El Oriente*, plying between New York and Galveston, Texas. It was held that injuries to a longshoreman employed by the corporation while he was on the ship and moving cargo destined to and from other states did not make a case within the federal Employers' Liability Act.

And in *Hammill v. Pennsylvania R. Co.*, (1915) 87 N. J. L. 388, 94 Atl. 313, affirmed (1916) 88 N. J. L. 717, 96 Atl. 292, it was held that an employee of a railroad company, which was the lessee of a canal and which used the same as an interstate railway, was not engaged in interstate commerce because, the court said, he was employed on a canal and not on a railroad.

Express company.—*Wells Fargo & Co.*, though using the facilities of a railroad company in conducting its business, is not a common carrier "by railroad," and therefore not within the federal Employers' Liability Act. *Higgins v. Erie R. Co.*, (1916) 89 N. J. L. 629, 99 Atl. 98.

III. EMPLOYEE ENGAGED IN INTERSTATE COMMERCE

Relation of employer and employee, in general.—"To be an employee of a railroad corporation, in the capacity of an operative, upon a train, it is apparent that the relation of master and servant must exist between the company and the individual who claims to be an employee. The relation of master and servant must be based upon a contract, either express or implied, and the terms and conditions of the contract must, in a large measure, be looked to, to determine the duties, which each one owes to the other, so that it may be ascertained what acts of the employee

may or may not constitute negligence as applied to the employee." *Chesapeake, etc., R. Co. v. Harmon*, (1916) 173 Ky. 1, 189 S. W. 1135.

The relationship of employer and employee is the same as that of master and servant. *Atlantic Coast Line R. Co. v. Tredway*, (1917) 120 Va. 735, 92 S. E. 560.

"It would seem from the federal decisions that when an employee is summoned for duty in relation to interstate transportation he is within the protection of the Act of Congress as soon as he comes upon the premises of the railway company. It should follow that he is under the same protection while, after leaving his duties, he is passing out of the premises of his employer, provided it is done within a reasonable time and along the usual route." *Davis v. Chicago, etc., R. Co.*, (1916) 134 Minn. 49, 158 N. W. 911.

In answer to the contention that the violation of an order for the movement of his train by a motorman on an interstate electric railroad terminated the relation of employer and employee for the time being, the court in *Spokane, etc., R. Co. v. Campbell*, (1916) 241 U. S. 497, 36 S. Ct. 683, 60 U. S. (L. ed.) 1125, said: "This invokes the doctrine that where an employee voluntarily and without necessity growing out of his work abandons the employment and steps entirely aside from the line of his duty, he suspends the relation of employer and employee, and puts himself in the attitude of a stranger or a licensee. The cases cited are those where an employee intentionally has gone outside of the scope of his employment, or departed from the place of duty. The present case is not of that character; for Campbell, as the jury might and presumably did find, had no thought of stepping aside from the line of his duty. From the fact that he disregarded and in effect violated the order as actually communicated to him, it, of course, does not necessarily follow that he did this wilfully. The jury was not bound to presume—it would hardly be reasonable to presume—that he deliberately and intentionally ran his train out upon a single track on which he knew an incoming train with superior rights was then due. However plain his mistake, the jury reasonably might find it to be no more than a mistake attributable to mental aberration, or inattention, or failure for some other reason to apprehend or comprehend the order communicated to him. In its legal effect this was nothing more than negligence on his part, and not a departure from the course of his employment."

It has been held that a section hand injured after working hours while returning on a hand car to his bunk house was still an employee of the railroad. *Sala-brin v. Ann Arbor R. Co.*, (1916) 194 Mich. 458, 160 N. W. 552.

In *Perez v. Atchison, etc., R. Co.*, (Tex. Civ. App. 1917) 192 S. W. 274, it was held that a section hand who after his day's work was done was standing behind a box car for shelter from the weather and to watch his children to see them safely across the tracks was not an employee of the railroad company at the time and so could not maintain an action under the federal Employers' Liability Act.

While a "student" fireman, so called in railroaders' parlance, was upon the engine and performing the duties contemplated by the arrangement with him, and within the scope of his duties under said arrangement, the railroad company owed to him the same duties it owed to the regularly employed fireman of an engine in its employment. But where the arrangement contemplated that while in the service of the company, such student fireman should be upon the engine, and under the direction of the engineer, and he was killed in a collision while riding in the caboose, which was not a place where his duties required him to be, and despite the engineer's request to come to the engine and assist so that, as the court said, "he, when he received his injuries, had for the time being, at least, abandoned and desisted from exercising the duties of his employment, as he had a right to do, . . . and was refusing to engage in the work contemplated by his arrangement," he was not an employee within the meaning of the federal Employers' Liability Act, although he had, for a few miles on the same trip, acted as fireman on the engine, under his "permit" as student fireman without wages. *Chesapeake, etc., R. Co. v. Harmon*, (1916) 173 Ky. 1, 189 S. W. 1135, Ann. Cas. 1918B 41.

In *Atlantic Coast Line R. Co. v. Tredway*, (1917) 120 Va. 735, 93 S. E. 560, it was held under the facts of the case that a signalman at a crossing of two railways was an employee of the defendant railroad within the meaning of the federal Employers' Liability Act.

In *Wichita Falls, etc., R. Co. v. Puckett*, (Okla. 1916) 157 Pac. 112, writ of error dismissed for want of jurisdiction, (1916) 242 U. S. 619, 37 S. Ct. 214, 61 U. S. (L. ed.) 531, it was held that an engineer employed and controlled as shown in the case, who was injured by the negligence of one or both of two railroad companies, while doing the work of both, was an employee of both within the meaning of the federal Employers' Liability Act, and might sue one or both of the companies.

Where an express messenger was also employed by the railroad to take charge of and operate its electric plant for lighting the cars, which was situated in the express car, he was held to be an employee of the railroad and entitled to sue under the federal Employers' Liability Act.

Wesseler v. Great Northern R. Co., (1916) 90 Wash. 234, 155 Pac. 1063, rehearing denied (1916) 90 Wash. 237, 157 Pac. 461.

Employed in interstate commerce, in general.—In construing the federal Employers' Liability Act the courts agree that to warrant an action under the Act both the employer and the employee must be engaged in interstate commerce at the time of the injury. *Erie R. Co. v. Krysienski*, (C. C. A. 2d Cir. 1916) 238 Fed. 142, 151 C. C. A. 218; *Pryor v. Bishop*, (C. C. A. 7th Cir. 1916) 234 Fed. 9, 148 C. C. A. 25.

That the employee must be engaged in interstate commerce at the precise time of the injury is emphasized by the courts. *Erie R. Co. v. Welsh*, (1916) 242 U. S. 303, 37 S. Ct. 116, 61 U. S. (L. ed.) 319.

"It is the employment that determines whether or not the injury to the employee is within the purview of that act, and not the act of the employee just at the time of his injury." *Jackson v. Industrial Board*, (1917) 280 Ill. 526, 117 N. E. 705.

"The true test as to whether one is engaged in interstate commerce is this: Was the employee, at the time of the injury, engaged in interstate transportation, or in work so closely related to it as to be practically a part of it?" *Cincinnati, etc., R. Co. v. Hansford*, (1917) 173 Ky. 126, 190 S. W. 690.

In *Cincinnati, etc., R. Co. v. Clarke*, (1916) 169 Ky. 662, 185 S. W. 94, it appeared that a workman engaged as an assistant to an engine hostler and called a pan puller, whose duty it was to get into a pit, under both interstate and intrastate engines, and remove the ashes, was injured by reason of the negligent backing up of a switch engine. The court held that the plaintiff was entitled to sue under the federal Act.

In *Louisville, etc., R. Co. v. Parker*, (1916) 242 U. S. 13, 37 S. Ct. 4, 61 U. S. (L. ed.) 119, affirming (1915) 165 Ky. 658, 177 S. W. 465, the court, holding that the purpose of the act performed governed the determination of the question whether it was interstate commerce, said: "The business upon which the deceased was engaged at the moment was transferring an empty car from one switch track to another. This car was not moving in interstate commerce, and that fact was treated as conclusive by the court of appeals. In this the court was in error, for if, as there was strong evidence to show, and as the court seemed to assume, this movement was simply for the purpose of reaching and moving an interstate car, the purpose would control and the business would be interstate. The difference is marked between a mere expectation that the act done would be followed by other work of a different character, as in *Illinois Cent. R. Co. v.*

Behrens, [1914] 233 U. S. 473, 478, Ann. Cas. 1914C 163, 34 S. Ct. 646, 58 U. S. (L. ed.) 1051, [1055], and doing the act for the purpose of furthering the later work."

The rule for determining whether a railroad is engaged in interstate commerce so as to bring it within the operation of the federal Employers' Liability Act was stated in Chicago, etc., R. Co. v. Kindlesparker, (C. C. A. 6th Cir. 1916) 234 Fed. 1, 148 C. C. A. 17.

In *Mayers v. Union R. Co.*, (1917) 256 Pa. St. 474, 100 Atl. 967, it does not appear from the opinion whether the injured employee was engaged in interstate commerce at the time of the injury. The court, apparently basing its decision entirely on the nature of the traffic in which the train that struck him was engaged, said: "The engine which struck the plaintiff and the cars which had come from Ohio had finished some interstate business, and had not yet begun upon any other. Their next work, so far as appears, might have been interstate or confined to Pennsylvania, as it should happen. At the moment the plaintiff was injured they were not engaged in either. Their character as instruments of commerce depended on their 'employment at the time, not upon remote probabilities or upon accidental later events.'" And in *Mathews v. Alabama Great Southern R. Co.*, (Ala. 1917) 76 So. 17, a foreman of a bridge gang injured while on a flat car carrying a pile driver, by a faulty apron of an abandoned coal chute striking him as the flat car was being hauled past the chute was held not to be so engaged in interstate commerce as to come within the federal Employers' Liability Act.

If an employee is not engaged in interstate commerce the mere fact that he is injured by an interstate train will not bring his case within the federal Employers' Liability Act. *Hardy v. Atlanta, etc., R. Co.*, (1917) 20 Ga. App. 303, 93 S. E. 18.

"Work of preparing articles for interstate commerce is not a part of such commerce within the meaning of the federal Employers' Liability Act." *Sullivan v. Chicago, etc., R. Co.*, (1916) 163 Wis. 583, 158 N. W. 321.

Service "preliminary to the erection of a structure which might eventually form a part of a roadbed used in interstate commerce" "had no connection even remote, with transportation." *Dickinson v. Industrial Board*, (1917) 280 Ill. 342, 117 N. E. 438.

Employees within the statute—Employee operating train, in general.—It is not open to question that an employee engaged in operating a train carrying interstate traffic comes within the federal Employers' Liability Act, it being uniformly so held by the courts. Washing-

ton Ry., etc., Co. v. Scala, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360 (conductor); *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298 (brakeman); *Daley v. Boston, etc., R. Co.*, (1917) 166 N. Y. S. 840 (brakeman); *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411 (fireman).

Engineer.—In *Chicago, etc., R. Co. v. Wright*, (1916) 239 U. S. 548, 36 S. Ct. 185, 60 U. S. (L. ed.) 431, affirming (1914) 96 Neb. 87, 146 N. W. 1024, it was held that an engineer who was injured while taking road engine from Phillipsburg, Kansas, to Council Bluffs, Iowa, was engaged in interstate commerce, and was entitled to recover within the meaning of the federal Employers' Liability Act, and it was said to be immaterial whether the engine was in actual commercial use or whether it was being taken to a repair shop.

An engineer on a gravel train hauling from North Dakota to Montana has been held to have been engaged in interstate commerce. *Hein v. Great Northern R. Co.*, (1916) 34 N. D. 440, 159 N. W. 14.

A baggage master employed on a train, making an interstate journey and injured while assisting in side tracking the train for the purpose of permitting another train to pass has been held to be engaged in interstate commerce, and entitled to recover under the federal Act. *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653.

Brakeman.—In *Texas, etc., R. Co. v. Sherer*, (Tex. Civ. App. 1916) 183 S. W. 404, it was held that a brakeman injured while setting a brake on a string of cars which were being switched, and which carried both interstate and intrastate merchandise, was engaged in interstate commerce and was entitled to sue under the federal Act, though the car on which he was working at the time of the accident contained intrastate freight only.

Members of a switching crew engaged in making up a train for interstate service are engaged in interstate commerce. *Hurley v. Illinois Cent. R. Co.*, (1916) 133 Minn. 101, 157 N. W. 1005; *Geer v. St. Louis, etc., R. Co.*, (Tex. 1917) 194 S. W. 939.

And this is true although the cars contain no interstate shipment at the time of the injury, if they have been designated for such service. *Christy v. Wabash R. Co.*, (1916) 195 Mo. App. 232, 191 S. W. 241.

In *Bolch v. Chicago, etc., R. Co.*, (1916) 90 Wash. 47, 155 Pac. 422, it was held that moving a car loaded with lumber for an interstate journey and standing on a storage track off the repair track to get at certain other cars and then moving it back again to the repair track, constituted an act of interstate commerce.

While an empty car loses its interstate character as soon as it reaches its destination in a state and subsequent movements of the car preparatory to sending it to another point in the state do not constitute interstate commerce, a car containing an interstate shipment continues its interstate character until the shipment is delivered to its final destination and a switchman injured while switching such a car after its arrival at one point within the state preparatory to placing it in a local train to be sent to another point within the state, its final destination, is within the Act. *Louisville, etc., R. Co. v. Meadors*, (1917) 176 Ky. 765, 197 S. W. 440.

A member of a switching crew injured while coupling cars has been held to be engaged in interstate commerce, where it appeared that one of the cars had been brought from without the state and before it was completely unloaded was moved temporarily but was to be returned to complete the unloading, the court holding that the service of the car in interstate commerce had not been completed. *Wagner v. Chicago, etc., R. Co.*, (1917) 277 Ill. 114, 115 N. E. 201.

A conductor of a switch engine engaged in moving cars to be made up into an interstate train is so engaged in interstate commerce as to be within the Act. *Southern R. Co. v. Fisher*, (Ala. 1917) 74 So. 580.

A member of a switching crew engaged in moving a refrigerator car which had been iced preparatory to receiving an interstate shipment of fruit has been held to have been engaged in interstate commerce. *Aldread v. Northern Pac. R. Co.*, (1916) 93 Wash. 209, 160 Pac. 420.

A section foreman riding on a hand car with his men on the way to repair a supposed washout of an interstate track was within this Act. *Atlantic Coast Line R. Co. v. Tomlinson*, (Ga. App. 1918) 94 S. E. 909.

Employee engaged in construction or repairs.—"Employment or work in interstate commerce is not limited or restricted, for the purposes of the Act, to employment or work in actual interstate transportation. Its scope includes that, and also work in the operation or repair of cars, engines, appliances, machinery, tracks, roadbeds, works, boats, wharves, and other equipment actually used in interstate commerce." *McKee v. Ohio Valley Electric R. Co.*, (1916) 78 W. Va. 131, 88 S. E. 616.

Where the instrumentality under repair consists of the track, bridges, telephone or telegraph wires or other necessary general means of operation of a railroad engaged in interstate commerce, an employee injured while so engaged is generally held to be engaged in interstate commerce, and the fact that the road may also do an intrastate business is immaterial. Thus a

section hand employed in repairing the track of a railroad engaged in both interstate and intrastate commerce is entitled to the benefits of the Act. *New York Cent. R. Co. v. Winfield*, (1917) 244 U. S. 147, 37 S. Ct. 546, 61 U. S. (L. ed.) 1045, Ann. Cas. 1917D 1139, reversing (1915) 216 N. Y. 284, 110 N. E. 614, Ann. Cas. 1916A 817, 168 App. Div. 351, 153 N. Y. S. 499; *Treadway v. St. Louis, etc., R. Co.*, (1917) 127 Ark. 211, 191 S. W. 930; *Denver, etc., R. Co. v. Davella*, (Colo. 1917) 165 Pac. 254. Likewise a section hand engaged in repairing an interstate track, who after "smoothing" the track was sent to assist in loading rails to be placed on the track, and was injured while so engaged, has been held to be within the Act. *Louisville, etc., R. Co. v. Williams*, (1917) 175 Ky. 679, 191 S. W. 920.

A section hand engaged in repairing a spur track leading to scales on which interstate cars were weighed has been held to be engaged in interstate commerce within the meaning of the Act. *Dowell v. Wabash R. Co.*, (Mo. App. 1916) 190 S. W. 939.

An employee engaged in removing wreckage from a track used by the railroad in both interstate and intrastate commerce has been held to be within the Act. *Denver, etc., R. Co. v. Wilson*, (Colo. 1917) 163 Pac. 857; *Schaeffer v. Illinois Cent. R. Co.*, (1916) 172 Ky. 337, 189 S. W. 227.

An employee engaged in removing wreckage from a track over which interstate traffic regularly passes is engaged in interstate commerce within the meaning of the federal Employers' Liability Act, although his primary object at the time is to assist in jacking up a wrecked car in order to rescue a fellow workman caught beneath it. *Southern R. Co. v. Puckett*, (1917) 244 U. S. 571, 37 S. Ct. 703, 61 U. S. (L. ed.) 1321, affirming (1915) 16 Ga. App. 551, 85 S. E. 809.

An assistant foreman of a gang of men on a work train, engaged in removing old rails and other material from the tracks and roadbed of a railroad company, which road was used both in interstate and intrastate commerce, and who was injured while so employed, has been declared to come within the Act, even though the train on which he was at work did not go without the state in which it was on the day of the accident. *Philadelphia, etc., R. Co. v. McConnell*, (C. C. A. 3d Cir. 1915) 228 Fed. 263, 142 C. C. A. 555. See also *Canadian Pac. R. Co. v. Thompson*, (C. C. A. 1st Cir. 1916) 232 Fed. 353, 146 C. C. A. 401.

An employee engaged in cleaning out ditches along an interstate railroad track has been held to be within the Act. *Louisville, etc., R. Co. v. Blankenship*, (Ala. 1917) 74 So. 960.

An employee assisting an engineer in making a survey with a view to improving a curve in the track has been held to be engaged in interstate commerce. *Southern R. Co. v. McGuin*, (C. C. A. 4th Cir. 1917) 240 Fed. 649, 153 C. C. A. 447.

A section hand who at the time of his injury was going to a place designated by the foreman to assist in unloading ties that were to be used in the track, "was engaged in work necessary to the maintenance and repair of the track—an instrumentality of interstate commerce—and was therefore employed in interstate commerce." *Louisville, etc., R. Co. v. Williams*, (1917) 175 Ky. 679, 194 S. W. 920.

In *Denver, etc., R. Co. v. Wilson*, (Colo. 1917) 163 Pac. 857, the plaintiff's intestate, who was a wrecker or car repairer, "was engaged in interstate commerce when he received the fatal injuries, as he was removing a wreck of interstate freight from, and opening up, the track used by defendant to carry both intra- and interstate commerce."

In *Grand Trunk R. Co. v. Knapp*, (C. C. A. 6th Cir. 1916) 233 Fed. 950, 147 C. C. A. 624, it was held that a carpenter riding in a train carrying equipment for the repair of a bridge used for interstate and intrastate commerce was within the federal Act where it appeared that he was to assist in making the repairs.

In *Louisville, etc., R. Co. v. Netherton*, (1917) 175 Ky. 159, 193 S. W. 1035, a painter working on a bridge used in both interstate and intrastate commerce was held to be within the Act.

In *Chicago, etc., R. Co. v. Kindlesparcker*, (C. C. A. 6th Cir. 1916) 234 Fed. 1, 148 C. C. A. 17, it was held an engine used in both intrastate and interstate commerce partook of the character of both and retained such character while it was laid up for repairs, and so an employee injured while making such repairs came within the federal Act. That case, however, may be considered as overruled by the later decision in *Minneapolis, etc., R. Co. v. Winters*, (1917) 242 U. S. 353, 37 S. Ct. 170, 61 U. S. (L. ed.) 358.

"Plaintiff being at the time of the accident engaged in the repair of cars employed solely in interstate commerce, his rights must be determined in accordance with the laws of the United States." *Smiegl v. Great Northern R. Co.*, (1917) 165 Wis. 57, 160 N. W. 1057.

A carpenter engaged in repairing a pumping station which supplies water to engines carrying interstate and intrastate commerce is at work on an instrumentality of interstate commerce and is within the federal Act. *Newkirk v. Pryor*, (Mo. App. 1916) 183 S. W. 682.

A workman on a station used in both interstate and intrastate commerce has

been held to be engaged in interstate commerce. *Chrosciel v. New York Cent., etc., R. Co.*, (1916) 174 App. Div. 175, 159 N. Y. S. 924.

It has been held that an employee engaged in repairing a telegraph line used by the railroad in dispatching its trains, both intrastate and interstate, was engaged in interstate commerce and so was within the operation of the federal Employers' Liability Act. *Coal, etc., R. Co. v. Deal*, (C. C. A. 4th Cir. 1916) 231 Fed. 604, 145 C. C. A. 490, *affirming* (N. D. W. Va. 1914) 215 Fed. 285 (writ of error granted to Supreme Court, *Coal, etc., R. Co. v. Deal*, (C. C. A. 4th Cir. 1916) 232 Fed. 1020, 146 C. C. A. 665); *Southern Pac. Co. v. Industrial Acc. Commission*, (1916) 174 Cal. 19, 161 Pac. 1143; *Collins v. Michigan Cent. R. Co.*, (1916) 193 Misc. 303, 159 N. W. 535.

An employee engaged in cleaning out an ash pit used by both interstate and intrastate engines has been held to have been engaged in work on an interstate instrumentality and so to come within the Act. *Grybowski v. Erie R. Co.*, (1916) 89 N. J. L. 361, 98 Atl. 1085, *affirming* (1915) 88 N. J. L. 1, 95 Atl. 764.

Employee supplying fuel or water.—An employee engaged in providing coal and water for trains used in interstate commerce is within the federal Employers' Liability Act. *Guy v. Cincinnati Northern R. Co.*, (Mich. 1917) 166 N. W. 667.

In *Chicago, etc., R. Co. v. De Bord*, (Tex. 1917) 192 S. W. 767, it was held that a brakeman engaged in assisting in the placing of a coal car on an elevated track so that it could be unloaded into coal chutes from which engines used in interstate traffic were supplied was engaged in interstate commerce.

An employee engaged in operating a pumping station, which furnished water to be used for both interstate and intrastate business has been held to be within the Act. *Roush v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 243 Fed. 712.

In *Collins v. Erie R. Co.*, (W. D. N. Y. 1917) 245 Fed. 811, it was held that an employee engaged in pumping water for use by engines in interstate commerce was within the Act, provided it appeared that the water was for immediate use and its use was not dependent on remote possibilities.

A person engaged in repairing a pumping station which supplied water to engines carrying interstate and intrastate commerce is at work on an instrumentality of interstate commerce and as such is within the federal Act. *Newkirk v. Pryor*, (Mo. App. 1916) 183 S. W. 682.

Employee guarding or inspecting property.—A flagman stationed as a watchman at a street crossing of a railroad engaged in interstate commerce is so closely connected with such commerce that his employment partakes of its nature

and he may maintain an action for personal injuries under the federal Employers' Liability Act. *Southern Pac. Co. v. Industrial Acc. Commission*, (1916) 174 Cal. 16, 161 Pac. 1142; *West v. Atlantic Coast Line R. Co.*, (1917) 174 N. C. 125, 93 S. E. 479.

It has been held that the fact that the particular train which a gateman was attempting to protect and by which he was injured, was an intrastate train, did not affect his status as an interstate employee. *Southern Pac. Co. v. Industrial Acc. Commission*, (1916) 174 Cal. 8, 161 Pac. 1139, L. R. A. 1917E 262.

Employee going to or returning from work or temporarily diverted therefrom.—An employee leaving the yards of a railroad after his day's work, which consisted of switching both interstate and intrastate commerce, was within the federal Act, as held in *Erie R. Co. v. Winfield*, (1917) 244 U. S. 170, 37 S. Ct. 556, 61 U. S. (L. ed.) 1057, *reversing* (1916) 88 N. J. L. 619, 96 Atl. 394.

A car inspector while going through the yards in search of material for the repair of an interstate car has been held to have been engaged in interstate commerce. *Norfolk, etc., R. Co. v. Short*, (1916) 171 Ky. 647, 188 S. W. 786.

In *Armbrecht v. Delaware, etc., R. Co.*, (1917) 90 N. J. L. 529, 101 Atl. 203, it was held that it was open to the jury to infer from the evidence that the plaintiff's intestate was engaged in removing snow from the tracks both interstate and intrastate of a railway; that the work had been only temporarily suspended; that the men were told by the boss to go in a covered car, as it was raining and freezing at the time; that to do so they walked along the tracks because they could not go otherwise, and decedent was struck and killed by a fast passenger train considerably behind time; that there was a failure to warn him that the passenger train was behind time and might be expected.

Where an employee engaged in interstate commerce left his engine for the purpose of rescuing a pedestrian who had fallen on the main line track on which an interstate train was approaching, it was held that the nature of his employment was not destroyed by such act. *Hardy v. Atlanta, etc., R. Co.*, (1917) 20 Ga. App. 303, 93 S. E. 18. And see *Southern R. Co. v. Puckett*, (1917) 244 U. S. 571, 37 S. Ct. 703, 61 U. S. (L. ed.) 1321, *affirming* (1915) 16 Ga. App. 551, 85 S. E. 809.

A fireman who was engaged in "making up trains" for an interstate journey, but who during a temporary lull in the work was injured, has been held to come under the Act. *Alabama Great Southern R. Co. v. Skotzy*, (1916) 196 Ala. 25, 71 So. 335.

Other employees.—A station employee injured while going to an interstate train to get the mail for his station has been held to be engaged in interstate commerce so as to come within the federal Employers' Liability Act. *Lynch v. Boston, etc., R. Co.*, (1917) 227 Mass. 123, 116 N. E. 401.

An employee engaged in unloading freight from a train engaged in interstate commerce is entitled to the benefits of the federal Employers' Liability Act. *Western Ry. v. Mays*, (1916) 197 Fla. 367, 72 So. 641.

A hostler engaged in fitting out engines for interstate traffic has been held to be engaged in interstate commerce. *Hinson v. Atlanta, etc., Air Line R. Co.*, (1916) 172 N. C. 646, 90 S. E. 772.

In *Wesseler v. Great Northern R. Co.*, (1916) 90 Wash. 234, 155 Pac. 1063, 157 Pac. 461, an express messenger in charge of the electric plant on an interstate train whose duty it was to stay on during the entire journey, who was injured while turning on the electric current to illuminate the train, was declared to be engaged in interstate commerce even though there was not at that particular moment of time any interstate freight or passengers.

A member of a bonding crew who was injured while they were preparing to resume the work of bonding the rails of the track of an electric railway company, which operated wholly within the state, but transported shipments in interstate commerce, was an employee within this Act. *Cholerton v. Detroit, etc., R. Co.*, (Mich. 1917) 165 N. W. 606.

Employees not within the statute.—Brakeman.—While cars may have an interstate character, this is true only while they are in interstate movement, and the interstate movement ceases when they reach the first distributing point in the state of their destination. Thus in *Chicago, etc., R. Co. v. Feightner*, (Ind. App. 1916) 114 N. E. 659, it was held that where the evidence did not show that cars after reaching a point of distribution would be sent out of the state it could not be said that a brakeman on a train taking them up and bound for a point within the state was engaged in interstate commerce.

Conductor.—It has been held that a conductor on a freight route between two points within a state could not be said to have been engaged in interstate commerce on his return trip because of the fact that on his outgoing trip the train carried freight destined to points without the state. *Illinois Cent. R. Co. v. Peery*, (1916) 242 U. S. 292, 37 S. Ct. 122, *reversing* 61 U. S. (L. ed.) 309, (1913) 123 Minn. 264, 143 N. W. 724, and (1914) 128 Minn. 119, 150 N. W. 382, 1103.

Engineer.—In *Missouri, etc., R. Co. v.*

Pace, (Tex. Civ. App. 1916) 184 S. W. 1051, it was held that coal billed to a point in Texas from Oklahoma and there reshipped to other Texas points lost its interstate character on reaching its first destination, and an engineer on the local train hauling the reshipment did not come within the statute.

A member of a switching crew, of a railroad company engaged in both interstate and intrastate commerce, who was injured while switching cars loaded with coal which had been standing on a storage track to a coal shed, where it was kept to supply locomotives both for interstate and intrastate commerce, has been said not to come under the Act, the crew of which he was a member being confined to intrastate work. *Chicago, etc., R. Co. v. Harrington*, (1916) 241 U. S. 177, 36 S. Ct. 517, 60 U. S. (L. ed.) 941.

In *Lehigh Valley R. Co. v. Barlow*, (1917) 244 U. S. 183, 37 S. Ct. 515, 61 U. S. (L. ed.) 1070, reversing (1915) 214 N. Y. 116, 107 N. E. 814, which affirmed (1913) 158 App. Div. 768, 143 N. Y. S. 1053, it was held that where it appeared that coal brought from without the state had remained on sidings for several days before being switched to the coal chutes, it had lost its interstate character, and therefore a member of the switching crew, injured while placing the cars on the chute, was not engaged in interstate commerce. The court said: "The essential facts in *Chicago, etc., R. Co. v. Harrington*, [1916] 241 U. S. 177, 36 S. Ct. 517, 60 U. S. (L. ed.) 947, did not materially differ from those now presented."

A member of a switching crew removing cars from the shops to a shed to be iced has been held not to be within the Act where it appeared that none of the cars had been specifically designated for interstate service. *Chicago, etc., R. Co. v. Industrial Board*, (1917) 277 Ill. 512, 115 N. E. 647.

In *Moran v. Central R. Co.*, (1916) 88 N. J. L. 730, 96 Atl. 1023, wherein it appeared that the plaintiff, a railroad employee, was injured by a car which had delivered a cargo of interstate merchandise and was at the time of the injury not in service but was awaiting an order for service, it was held that the car had ceased to perform its function in interstate commerce as soon as it disposed of its cargo, and therefore the plaintiff was not injured in interstate commerce and could not recover under the federal Act.

Employee engaged in construction or repairs.—A laborer engaged in cutting a tunnel for an interstate railroad is not engaged in interstate commerce, where the tunnel is not so far completed as to be used as an instrumentality of interstate commerce. *Raymond v. Chicago, etc., R. Co.*, (1917) 243 U. S. 43, 37 S. Ct. 268, 61 U. S. (L. ed.) 583, affirming (C. C. A. 9th Cir. 1916) 233 Fed. 239,

147 C. C. A. 245, and the court saying the question was settled "by recent decisions of this court, whatever doubt may have existed in the minds of some at the time the judgment below was rendered."

In *McKee v. Ohio Valley Electric R. Co.*, (1916) 78 W. Va. 131, 88 S. E. 616, it was held that a laborer in an excavation, made under a wooden trestle over which the trains of an interstate railroad ran and engaged in making a foundation for a new steel bridge to be substituted for the wooden trestle, was not engaged in interstate commerce, his work not being intimately enough connected with interstate commerce.

A section hand engaged in helping to remove ties from the right of way and piling them for safe-keeping and future use has been held not to have been engaged in interstate commerce, and the fact that the ties were afterward used on a section of track over which interstate commerce was hauled did not alter the rule. *Missouri, etc., R. Co. v. Watson*, (Tex. Civ. App. 1917) 195 S. W. 1177.

A section hand engaged in peeling railroad ties along the right of way for future use in the track has been held not to have been engaged in interstate commerce. *Karras v. Chicago, etc., R. Co.*, (1917) 165 Wis. 578, 162 N. W. 923, L. R. A. 1917E 677.

A section hand employed ordinarily in replacing rails on an interstate track was not engaged in interstate commerce while merely loading old rails lying on the right of way. *Cincinnati, etc., R. Co. v. Hansford*, (1917) 173 Ky. 126, 190 S. W. 690.

A carpenter building forms into which concrete was to be poured to form a retaining wall for the tracks of a railroad engaged in both interstate and intrastate commerce has been held not to be within the Act. *Dickinson v. Industrial Board*, (1917) 280 Ill. 342, 117 N. E. 438.

In *Hudson, etc., R. Co. v. Iorio*, (C. C. A. 2d Cir. 1917) 239 Fed. 855, 152 C. C. A. 641, wherein it appeared that an employee was engaged in placing rails in a pit for future use, the court said: "It cannot be said that the rails which Iorio was engaged in storing against a use that was certainly not imminent, and might never occur, were at the moment engaged in, or practically part of, interstate commerce; for that commerce was going on without any present assistance, either from Iorio, or the rails on which he was working, or the men who were working with him. We therefore hold that the actual employment or use at the moment of injury of the thing upon which the person injured was working is the test of applicability of the statute, under circumstances such as shown here. By that test plaintiff below was not practically engaged in or a part of interstate commerce when he was hurt, and the judgment is reversed."

Following *Chicago, etc., R. Co. v. Harrington*, (1916) 241 U. S. 177, 36 S. Ct. 517, 60 U. S. (L. ed.) 941, the court, in *Kelly v. Pennsylvania R. Co.*, (C. C. A. 3d Cir. 1916) 238 Fed. 95, 151 C. C. A. 171, wherein it appeared that a carpenter was injured while causing the removal of lumber from storage tracks to certain coal chutes which he had been directed to repair, said: "What is there, then, in the case at bar from which it can be inferred that Kelly was, at the time he was killed, engaged in interstate transportation? His engagement in causing the transfer of the lumber from the storage tracks to the place where it was to be used does not connect him more closely with transportation than Harrington's engagement in taking coal from the storage tracks to the coal chutes. In neither case was there such close direct relation to interstate transportation as would require the application of the provisions of the law."

Where rails were removed from a track and new ones put in their places several days before plaintiff was injured, and were laid on the ground outside of and parallel with the track, and could not have interfered with the railroad's use of the track or its business as a carrier, and it was not shown to have been the intention of the railroad company to use these rails in its track elsewhere, or that they were so used, or even fit for such use, the work of gathering them up for the purpose of storing them elsewhere, or perhaps selling them as scrap steel, could in no sense be considered as a repairing of the track, or as necessary to the railroad's engaging in interstate commerce. *Illinois Cent. R. Co. v. Kelly*, (1916) 167 Ky. 745, 181 S. W. 375.

In *Alexander v. Great Northern R. Co.*, (1916) 51 Mont. 565, 154 Pac. 914, a conductor on a work train, operating wholly within the state, and carrying timber to a point within the state from where it would be carried by a tributary branch to the company's tie treating plant within the state, from which place it was shipped to various points either within or without the state as the need arose, was held not to be engaged in interstate commerce.

In *Killes v. Great Northern R. Co.*, (1916) 93 Wash. 416, 161 Pac. 69, it was held that a workman building a scaffold to be used in painting a freight shed used for interstate traffic was not engaged in interstate commerce.

An employee engaged in loading sand and gravel at a gravel bank for repair of an interstate railroad, and who was killed by the falling of a portion of the bank on which he was at work, has been held not to have been engaged in interstate commerce. *Yazoo, etc., R. Co. v. Houston*, (1917) 114 Miss. 888, 75 So. 690.

A mechanic repairing a locomotive in a railroad company's roundhouse in Iowa

was not then employed in interstate commerce. *Minneapolis, etc., R. Co. v. Winters*, (1917) 242 U. S. 353, 37 S. Ct. 170, 61 U. S. (L. ed.) 358, 154 N. W. 964, 155 N. W. 1103, reversing on this point, but for other reasons affirming judgment in (1914) 126 Minn. 260, 148 N. W. 106, (1915) 131 Minn. 181, 496.

In *Central R. Co. v. Paslick*, (C. C. A. 2d Cir. 1917) 239 Fed. 713, 152 C. C. A. 547, wherein it appeared that an employee was injured while at work repairing a car belonging to another interstate carrier, the court said: "If the repair of an engine in the intervals between its interstate occupations is not sufficiently close to commerce to be a part of it, the repair of a car, which moves only when the engine hauls it, is certainly no closer."

In *Castonguay v. Grand Trunk Ry.*, (Vt. 1917) 100 Atl. 908, it was held that a workman engaged in the repair of a roundhouse wall was not employed in interstate commerce.

In *Washington, etc., Electric R. Co. v. Owens*, (1917) 131 Md. 1, 101 Atl. 532, reversing judgment for the plaintiff, and without awarding a new trial, the court said: "Judge Dobler, who presided at the trial below, followed the ruling of this court in *Baltimore, etc., R. Co. v. Branson*, [1916] 128 Md. 678, 98 Atl. 225. In that case Branson suffered injury in the shops at Cumberland while engaged in painting engines and cars used in both interstate and intrastate commerce, and this court allowed a recovery upon the ground that the work of painting these engines and cars had a reasonable and substantial relation to interstate commerce. But that case has been reversed by the Supreme Court of the United States (*Baltimore, etc., R. Co. v. Branson*, [1917] 242 U. S. 623, 37 S. Ct. 244, 61 U. S. (L. ed.) 534), apparently upon the sole ground that Branson was not engaged in interstate commerce at the time he suffered the injury."

An employee engaged in repairing a car which was used during the previous week in interstate commerce but which was used in intrastate commerce after its repair has been held not to be within the Act. *Loveless v. Louisville, etc., R. Co.*, (Ala. 1917) 75 So. 7.

An employee assisting in unloading wreckage from a car for the purpose of selecting that which is capable of repair is not brought within the Act merely because inspectors several days later designate the parts, through which he is injured, to be shipped out of the state for repair. *Schaeffer v. Illinois Cent. R. Co.*, (1916) 172 Ky. 337, 189 S. W. 237.

A carpenter engaged in erecting a stove pipe to be used in a round house where engines engaged in interstate commerce were kept was held in *Dunn v. Missouri Pac. R. Co.*, (Mo. App. 1916) 190 S. W. 966, not to be engaged in interstate commerce.

Employee supplying fuel or water.—In *Chicago, etc., R. Co. v. Harrington*, (1916) 241 U. S. 177, 36 S. Ct. 517, 60 U. S. (L. ed.) 941, *affirming* (Mo. App. 1915) 180 S. W. 443, it appeared that at the time an employee was killed he was engaged in causing the removal of coal from storage tracks to the coal shed or chutes by which the same would be delivered to locomotives used in interstate traffic. The Supreme Court held that the Act of Congress did not apply because there was no close or direct relation to interstate transportation in the taking of the coal to the coal chutes.

Employee guarding or inspecting property.—In *Chicago, etc., R. Co. v. Industrial Board*, (1916) 273 Ill. 528, 113 N. E. 80, L. R. A. 1916F 540, a watchman employed in a railroad yard, which contained a few cars used in interstate commerce and others not carrying interstate commerce, who was injured while inspecting certain cars not shown to be used in interstate commerce, was declared not to be engaged in an act of interstate commerce at the time of his injury. *Compare Pittsburgh, etc., R. Co. v. Farmers' Trust, etc., Co.*, (1915) 183 Ind. 287, 108 N. E. 108.

A night watchman charged with the duty of guarding tools and material for the construction of a new depot and track to be used in interstate commerce has been held not to be engaged in interstate commerce as tested by the rule that the employee at the time of the injury must be engaged in interstate transportation, or in work so closely related to it as to be practically a part of it. *New York Cent. R. Co. v. White*, (1917) 243 U. S. 188, 37 S. Ct. 247, 61 U. S. (L. ed.) 667, Ann. Cas. 1917D 629, L. R. A. 1917D 1, *affirming* (1915) 216 N. Y. 653, 110 N. E. 1051, (1915) 169 App. Div. 903, 152 N. Y. S. 1149.

A railroad detective riding on a train of cars which was being switched in the railroad yards has been held not to be engaged in interstate commerce where it did not appear that there were interstate cars in that vicinity. *Chicago, etc., R. Co. v. Industrial Board*, (1916) 273 Ill. 528, 113 N. E. 80, L. R. A. 1916F 540.

A person employed by a railroad to assist in a search for train robbers who had robbed an interstate train has been held not to have been engaged in interstate commerce so as to come within the Act. *Alabama Great Southern R. Co. v. Bonner*, (Ala. 1917) 75 So. 986.

Employee going to or returning from work or temporarily diverted therefrom.—An employee who was injured while on his way for orders from his superior has been held not to have been engaged in interstate commerce at the time of his injury, since the nature of his work was undetermined until his orders had been given, and it was further held that the fact that but for his injury he would have

been given orders requiring him to engage in interstate commerce did not alter the rule. *Erie R. Co. v. Welsh*, (1916) 242 U. S. 303, 37 S. Ct. 116, 61 U. S. (L. ed.) 319, *affirming* (1913) 89 Ohio St. 81, 105 N. E. 189.

A member of a train crew occupying a caboose while waiting to be called to duty is not engaged in interstate commerce before the call is actually made. *Pryor v. Bishop*, (C. C. A. 7th Cir. 1916) 234 Fed. 9, 158 C. C. A. 25.

In *Bumstead v. Missouri Pac. R. Co.*, (1917) 99 Kan. 589, 162 Pac. 347, L. R. A. 1917E 734, the Kansas court extended the doctrine as announced in *Pryor v. Bishop*, cited in the last preceding paragraph, to include a freight conductor who, after actually being called about an hour and a half before the time for his train to leave and who was required to report thirty minutes before that time, was getting his breakfast in the caboose preparatory to reporting.

In *Jacoby v. Chicago, etc., R. Co.*, (1917) 165 Wis. 610, 161 N. W. 751, 164 N. W. 88, it was held that a car record clerk, who after completing his duties was injured while leaving the yards, was not at the time engaged in interstate commerce. The court distinguished the case from that where a fireman was injured while going from his engine to his boarding house, preparatory to returning to his engine for an interstate trip, on the ground that the car clerk was leaving for the day after finishing his duties and with no intention to return.

In *McBain v. Northern Pac. R. Co.*, (1916) 52 Mont. 578, 160 Pac. 654, it was held that, under the rule that the employment at the precise time of the injury is the test of the nature of the work, a brakeman who after the completion of his trip and before assignment to another was injured while going through the yards for material for use in a future trip, the nature of which was undetermined, could not be said to have been engaged in interstate commerce. And it was further held that it was of no consequence that his work ordinarily had to do with interstate commerce to a much greater extent than with purely local shipments.

It has been held that a railroad carpenter who temporarily left his work and went across the tracks for the purpose of buying a newspaper and was injured while so doing was not at that time engaged in interstate commerce. *Illinois Cent. R. Co. v. Archer*, (1916) 113 Miss. 153, 74 So. 135.

A janitor in a general office of a railroad who was injured while breaking up coal to put in the furnace has been held not to be engaged in interstate commerce, although the business of the railroad was almost entirely interstate in character.

Great Northern R. Co. v. King, (1917) 165 Wis. 159, 161 N. W. 371.

IV. NEGLIGENCE AS BASIS OF LIABILITY

In general.—Under this Act, the mere happening of the accident will not warrant a recovery; there must be negligence on the part of the railroad company or on the part of some employee, as this is the basis of liability. *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110; *Southern Ry. Co. v. Gray*, (1916) 241 U. S. 333, 36 S. Ct. 558, 60 U. S. (L. ed.) 1030; *Williams v. Western, etc., R. Co.*, (1917) 20 Ga. App. 726, 93 S. E. 555; *Western Maryland R. Co. v. Sanner*, (1917) 130 Md. 581, 101 Atl. 587; *Hull v. Virginian R. Co.*, (1916) 78 W. Va. 25, 88 S. E. 1060.

Therefore before a recovery can be had, it must be shown by either direct or circumstantial evidence that the railway company was negligent; or, in other words, that it owed a care and failed to exercise it. *Illinois Cent. R. Co. v. Skaggs*, (1916) 240 U. S. 66, 36 S. Ct. 249, 60 U. S. (L. ed.) 528; *Southern R. Co. v. Derr*, (C. C. A. 6th Cir. 1917) 240 Fed. 73, 153 C. C. A. 109; *Pennsylvania R. Co. v. Glas*, (C. C. A. 3d Cir. 1917) 239 Fed. 256, 152 C. C. A. 244; *Williams v. Western, etc., R. Co.*, (1917) 20 Ga. App. 726, 93 S. E. 555; *Roebuck v. Atchison, etc., R. Co.*, (1917) 99 Kan. 544, 162 Pac. 1153, L. R. A. 1917E 741; *Norfolk, etc., R. Co. v. Short*, (1916) 171 Ky. 647, 188 S. W. 786; *Western Maryland R. Co. v. Sanner*, (1917) 130 Md. 581, 101 Atl. 587; *Sims v. Minneapolis, etc., R. Co.*, (Mich. 1917) 162 N. W. 988; *Gaines v. Grand Trunk R. Co.*, (1916) 193 Mich. 398, 159 N. W. 542; *Hurley v. Illinois Cent. R. Co.*, (1916) 133 Minn. 101, 157 N. W. 1005; *Wilson v. Grand Trunk R. Co.*, (N. H. 1916) 97 Atl. 981; *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528; *Hull v. Virginian R. Co.*, (1916) 78 W. Va. 25, 88 S. E. 1060.

The employer is not an insurer of the safety of his employees. *Toler v. Northern Pac. R. Co.*, (1917) 94 Wash. 360, 162 Pac. 538.

So where an employee is hurt and there is no proof that he was at fault it does not follow that the employer's agents must have been, so as to permit him to recover therefor. *Popoutsikis v. Spokane, etc., R. Co.*, (1915) 89 Wash. 1, 153 Pac. 1053.

And the question of negligence on the part of the company as a deduction from the pulling out of a draw bar or of a comparison of negligences should not be submitted to the jury where it appears that an accident was due to the neglect of the deceased to perform his duty by complying with the rules of the company in such cases. *Great Northern R. Co. v. Wiles*, (1916) 240 U. S. 444, 36 S. Ct. 406, 60 U. S. (L. ed.) 732.

Negligence is essential to recovery and the plaintiff must prove it even where the local state statute provides that in actions against railroads for damages proof of injury inflicted by an engine propelled by steam shall be prima facie evidence of negligence. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, reversing (Miss. 1916) 71 So. 913.

The doctrine has been recognized that where an injury cannot reasonably be anticipated and would not have happened unless under exceptional circumstances, it is not negligence to fail to take precautionary measures to prevent it, although if taken the injury would not have resulted. *Brightwell v. Lusk*, (1916) 194 Mo. App. 643, 189 S. W. 413.

Willfulness is not an element under this statute. *Dutton v. Atlantic Coast Line R. Co.*, (1916) 104 S. C. 16, 88 S. E. 263.

The term negligence as here used must be taken to mean such act of commission or omission as would at common law have been sufficient to entitle the case to be submitted to the jury. *Western Maryland R. Co. v. Sanner*, (1917) 130 Md. 581, 101 Atl. 587.

In this connection the United States Supreme Court has declared that in an action under the Federal Employers' Liability Act, rights and obligations depend upon it and applicable principles of common law, as interpreted and applied in the federal courts. *Southern R. Co. v. Gray*, (1916) 241 U. S. 333, 36 S. Ct. 558, 60 U. S. (L. ed.) 1030. And in a case in Kansas it is said: "While the Federal Employers' Liability Act does not define the term 'negligence' of the carrier, it has been determined that the expression as used in the act is the common-law negligence of master and servant as defined by the federal courts, and that the common law as interpreted and applied in the federal courts determines what constitutes negligence; and, if a state court differs with the federal courts as to what will or will not constitute negligence, the interpretation of the federal courts necessarily controls." *Roebuck v. Atchison, etc., R. Co.*, (1917) 99 Kan. 544, 162 Pac. 1153, L. R. A. 1917E 741.

Negligence must have been proximate cause.—There must be a proximate and causal relation between the damages and the negligence of the company. *Chesapeake, etc., R. Co. v. Carnahan*, (1916) 241 U. S. 241, 36 S. Ct. 594, 60 U. S. (L. ed.) 979; *Carlson v. Chicago Great Western R. Co.*, (1917) 205 Ill. App. 156; *Cincinnati, etc., R. Co. v. Perkins*, (1917) 177 Ky. 88, 197 S. W. 526; *Young v. Norfolk, etc., R. Co.*, (1916) 171 Ky. 510, 188 S. W. 621.

So in an action to recover damages for an injury alleged to be due to the company's negligence, it must appear that the

injury was the natural and probable consequence of the negligence or wrongful act. And where, upon the evidence presented, the proximate cause of a person's death may well have been either his own or the company's negligence, adequate instructions should be given to the jury in regard thereto so that they may know and apply the rules laid down by the federal courts in such cases. Delaware, etc., Co. v. Ketz, (C. C. A. 3d Cir. 1916) 233 Fed. 31, 147 C. C. A. 101.

The death of a brakeman in a rear-end collision cannot be said not to "result in part from the negligence of any of the employees" of the railway company, within the meaning of this section where, but for the negligence of such employees, neither train would have been at the point of collision at the time it occurred, even though the decedent would not have been killed had he done his duty and gone back to warn the following train instead of remaining in the caboose, as he did. Union Pac. R. Co. v. Hadley, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, affirming (1916) 99 Neb. 349, 156 N. W. 765.

In Wisconsin, however, it has been declared that under the Federal Employers' Liability Act the common-law rule as to proximate cause has no relevancy, it being sufficient that the defect or negligence pleaded contributed in any manner to cause the injury. Calhoun v. Great Northern R. Co., (1916) 162 Wis. 264, 156 N. W. 198.

"The mere fact that some other cause operated with the negligence of the defendant does not relieve it from liability. The original wrong, concurring with some other cause for which neither party is liable and both causes operating proximately at the same time in producing the injury, makes the defendant liable, even though the other cause was one for which the defendant was not responsible." Thus it was so held where both a jack block and a stationary car on the adjoining track were concurring causes in the death of plaintiff's intestate, which could not have resulted from either cause alone, it being said that the presence of the stationary car on an adjoining track was not an independent, intervening cause that would relieve the defendant of the primary, producing cause, which, as found by the jury, was the negligent presence of the jack block in the space between the tracks. Illinois Cent. R. Co. v. Skinner, (1917) 177 Ky. 62, 197 S. W. 552.

Defects in cars, engines, appliances, etc.—*Presumption as to knowledge of defect.*—"Under the federal statute the presumption prevails, even after proof of the defect, that the railway company was not aware of its existence; and until it is shown that the railway company knew, or in the exercise of ordinary care should have known, of the defect, it is not

charged with that knowledge." St. Louis, etc., R. Co. v. Ingram, (1916) 124 Ark. 298, 187 S. W. 452.

Defect not due to negligence.—A railroad company is not liable to damages under this Act for a defect in its cars unless that defect was due to its negligence. Pennsylvania R. Co. v. Glas, (C. C. A. 3d Cir. 1917) 239 Fed. 256, 152 C. C. A. 244.

Effect of inspection.—Testimony by those who did it, that their work of inspection and preparation was properly done and made safe a place where another employee was required to work, is not conclusive of no negligence when their statements are contradicted by the physical facts. Louisville, etc., R. Co. v. Thomas, (1916) 170 Ky. 145, 185 S. W. 840.

Duty of employer to furnish sufficient assistants.—An employer must furnish his employee with adequate assistance or a sufficient number of workmen. Cincinnati, etc., R. Co. v. Tucker, (1916) 168 Ky. 144, 181 S. W. 940.

It is the duty of the master to exercise ordinary care to assign an adequate number of servants to each particular piece of work and to maintain them during the progress of the work and each particular part of it. Sorenson v. Northern Pac. R. Co., (1917) 53 Mont. 268, 163 Pac. 560.

Duty of carrier as to place to work.—*It is the duty of the carrier to furnish a reasonably safe place for his employees in which to do its work.* Philadelphia, etc., R. Co. v. Marland, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51; St. Louis, etc., R. Co. v. Steel, (1917) 129 Ark. 520, 197 S. W. 288; McFarland v. Chesapeake, etc., R. Co., (1917) 177 Ky. 551, 197 S. W. 944; Young v. Norfolk, etc., R. Co., (1916) 171 Ky. 510, 188 S. W. 621; Louisville, etc., R. Co. v. Wright, (1916) 170 Ky. 230, 185 S. W. 861; Cincinnati, etc., R. Co. v. Tucker, (1916) 168 Ky. 144, 181 S. W. 940; Winslow v. Missouri, etc., R. Co., (Mo. App. 1916) 192 S. W. 121; Falyk v. Pennsylvania R. Co., (1917) 256 Pa. St. 367, 100 Atl. 961.

And where a servant is required to work in a dangerous and unsafe place the master is responsible for any injury that he may sustain on account of such unsafe and dangerous condition. Coal, etc., R. Co. v. Deal, (C. C. A. 4th Cir. 1916) 231 Fed. 604, 145 C. C. A. 490.

Obligations which duty imposes.—The duty of a carrier to exercise reasonable care to provide a safe place for his employees to work includes properly constructed roadbed, structures, and track used in the operation of a railroad. Cincinnati, etc., R. Co. v. Hall, (C. C. A. 6th Cir. 1917) 243 Fed. 76, 155 C. C. A. 606. See also Philadelphia, etc., R. Co. v. Marland, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51.

The standard of care required of a railroad company in constructing its roads and bridges is such reasonable care as is

ordinarily used by railroads generally in that respect. *Hull v. Virginian Ry. Co.*, (1916) 78 W. Va. 25, 88 S. E. 1060.

The failure of a railroad company to discover the condition of a tie, a piece of which, being rotten, slivered off under the weight of an employee who stepped upon it, causing him to stumble and fall, and its failure to ballast to the top of the tie, neither of which defects was of a character to impair safety in operation, will not render it liable under this Act for injuries sustained by such employee, who knew that there were always some ties on the line which were partly decayed, and that the ballast was occasionally below the top of the ties. *Nelson v. Southern R. Co.*, (1918) 246 U. S. 253, 38 S. Ct. 233, 62 U. S. (L. ed.) 699, *affirming* (1915) 170 N. C. 170, 86 S. E. 1036.

Duty of employer as to appliances.—The employer must furnish the employee reasonably safe tools and appliances to work with. *Philadelphia, etc., Ry. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51; *Cincinnati, etc., R. Co. v. Tucker*, (1916) 168 Ky. 144, 11 S. W. 940; *Louisville, etc., R. Co. v. Patrick*, (1915) 167 Ky. 118, 180 S. W. 55; *Knight v. Vicksburg, etc., R. Co.*, (1917) 142 La. 357, 76 So. 799; *McFarland v. Chesapeake, etc., R. Co.*, (1917) 177 Ky. 551, 197 S. W. 945; *Young v. Norfolk, etc., R. Co.*, (1916) 171 Ky. 510, 188 S. W. 621; *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 367, 100 Atl. 961; *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528; *Chicago, etc., R. Co. v. Cosio*, (Tex. Civ. App. 1916) 182 S. W. 83.

"The rule of law is that the employer is under the duty to exercise ordinary care to supply machinery and appliances reasonably safe and suitable for the use of the employee, and in case of his failure so to do, unless the employee has waived his right after due notice of defective appliances and machinery, or has, upon due knowledge, assumed the risk, the employer is, of course, liable for any such dereliction in duty." *Toler v. Northern Pac. R. Co.*, (1917) 94 Wash. 360, 162 Pac. 538.

"While the act abolished what is known as the 'fellow-servant doctrine,' there is nothing contained therein which changes the rule as respects the nonassignable duty of the master to exercise reasonable care in providing the servant with reasonably safe tools and appliances with which to perform the work required of him by the master." *Coal, etc., R. Co. v. Deal*, (C. C. A. 4th Cir. 1916) 231 Fed. 604, 145 C. C. A. 490.

If an appliance has been furnished for use by the workman for a particular purpose and in a particular way, and the workman proceeds to use it for the contemplated purpose and in a proper manner without any want of care, and that appliance unexpectedly and without any

known cause gives way or breaks, it would be imputable to a defective condition, and upon proof of such accident and of such facts it is a case of *res ipsa loquitur*, a *prima facie* case is established, and the burden is upon the employer to explain away, if possible, his presumed negligence. *Toler v. Northern Pac. R. Co.*, (1917) 94 Wash. 360, 162 Pac. 538.

The employer is under a duty to exercise ordinary care to supply machinery and appliances reasonably safe and suitable for the use of the employee, but is not required to furnish the latest, best, and safest appliances, or to discard standard appliances upon the discovery of later improvements, provided those in use are reasonably safe and suitable. *Chicago, etc., R. Co. v. Bower*, (1916) 241 U. S. 470, 36 S. Ct. 624, 60 U. S. (L. ed.) 1107.

"The master is not compelled to provide the best means or implements that can be secured, or those that are absolutely safe and most convenient. His duty is discharged when he provides implements and means which are reasonably safe for those exercising ordinary intelligence for their own safety." *Kentucky Traction, etc., Co. v. Sharp*, (Ky. 1917) 197 S. W. 464.

And in the absence of some rule of law prescribing the character of a maintenance of a way car, no negligence can be predicated upon the use of such a car which was duly inspected, which was in continuous service, and which had always stood up under the work for which it was designed, and was wrecked by a collision brought about by the deceased himself, the employee's act being the proximate cause of the accident and the sole negligence shown. *Trice v. Southern Pac. Co.*, (1916) 174 Cal. 89, 161 Pac. 1144.

Rules of company—*In general.*—"The master cannot escape responsibility or avoid his legal duty to use ordinary care to furnish his servant a reasonably safe place to work by promulgating a rule which places that responsibility on the servant." The court also further said in this connection: "We do not hold that the rule was in any sense improper, nor do we hold that in no case can the master discharge his full duty to the servant by promulgating proper rules for his guidance. Each case must stand on its own facts in that regard, and there may be, and often are, conditions connected with the servant's work which make the promulgation of rules necessary, and in which the establishment of adequate rules to govern the workmen is all that can reasonably be expected of the master. In such a case the master does discharge his whole duty to the servant when he establishes such rules." *Yoakum v. Lusk*, (Mo. 1917) 193 S. W. 635.

Where employee in position of peril at distance from others.—Where coemployees are distant from each other, and it is dangerous for one to have another continue at his work, he who is subject to the peril not being in a position to ascertain the true conditions, it is the duty of the employer to frame and promulgate such rules and regulations as will afford reasonable safety to employees. *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 367, 100 Atl. 961.

Effect of acquiescence in disregard of rule.—A rule of the company which has been habitually disregarded by its employees with its knowledge will not relieve it from liability. *Illinois Cent. R. Co. v. Skinner*, (1917) 177 Ky. 62, 197 S. W. 552.

But it is only acquiescence in habitual violation of rules that amounts to abrogation. *St. Louis, etc., R. Co. v. Stewart*, (1916) 124 Ark. 437, 187 S. W. 920.

Particular acts or conditions as negligence.—Loading cars.—A railroad is charged with the duty of exercising ordinary care to equip and load its trains so as to avoid injury to trackmen whose presence along and near the track it has reason to anticipate, and where it fails to exercise such care, and by reason thereof one charged with the duty of maintaining the track is injured, it is liable. *Cincinnati, etc., R. Co. v. Claybourne*, (1916) 169 Ky. 315, 183 S. W. 903.

Weeds on right of way.—The mere presence of weeds upon a right of way is not of itself a breach of duty to a section hand whose duties involve the care and maintenance of such right of way. *McCutcheon v. Chicago, etc., Ry. Co.*, (1917) 164 N. W. 775.

Trolley pole close to track.—Closer to the track than other poles on the line and maintaining a trolley pole so close thereto that a conductor cannot safely discharge the duties required of him, constitutes evidence of negligence sufficient to justify the submission of the case to the jury. *Washington R., etc., Co. v. Scala*, (1916) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360.

Violation of Safety Appliance Acts.—The United States Supreme Court, in referring to a violation of the Safety Appliance Acts as negligence, has said: "It is of course settled that if the equipment was in fact defective or out of repair, the question whether this was attributable to the company's negligence is immaterial." *Spokane, etc., R. Co. v. Campbell*, (1915) 241 U. S. 497, 36 S. E. 683, 60 U. S. (L. ed.) 1125.

A violation of the Safety Appliance Act is negligence per se. *Lemee v. Texas, etc., Ry. Co.*, (1917) 141 La. 769, 75 So. 676.

In view of the positive duty imposed by the Safety Appliance Act upon railroads to furnish safe appliances for the coupling

of cars, the jury may infer negligence on the part of the company from the fact that a coupler failed to perform its function. *Minneapolis, etc., R. Co. v. Gottschall*, (1917) 244 U. S. 66, 37 S. Ct. 598, 61 U. S. (L. ed.) 995.

It is error in an action under this Act, alleging a violation of the Safety Appliance Act, because the tender of an engine was not equipped with grabirons or hand holds, to charge that "any iron rod or iron device securely fastened upon the end of defendant's tender to which employees could conveniently catch hold while in the performance of their duties in coupling or uncoupling cars was a handhold or grab iron within the meaning of the law," and that, therefore, if the vertical iron handhold and iron rod—pin lifting or uncoupling lever—extending across the tender just above the coupler, were so designed and constructed as to permit employees engaged in coupling or uncoupling cars to readily grasp them for their better security while in the performance of such work, the defendant was not guilty of negligence in failing to provide necessary and proper handholds or grab-irons, and the plaintiff cannot recover for any injury sustained from lack of them on the engine tender, provided, only, the jury should find "that said attachments or devices furnished reasonable security to the employees of defendant in coupling and uncoupling said tender and cars." *St. Joseph, etc., R. Co. v. Moore*, 243 U. S. 311, 37 S. Ct. 278, 61 U. S. (L. ed.) 741.

As to the application of the rule of *res ipsa loquitur* it has been said: "We think we give the plaintiff in an employee's case all the benefit of the maxim to which he is entitled when we say that it may apply to aid him; but whether the event does speak, and what it says, depends upon the facts of the particular case." *Southern R. Co. v. Deer* (C. C. A. 6th Cir. 1917) 240 Fed. 73, 153 C. C. A. 109.

And in another case it was declared: "Though the strict doctrine of *res ipsa loquitur* does not apply as between master and servant, except in a modified form, where the accident results from defective conditions, conditions which can be explained upon no reasonable assumption other than negligence, and circumstances appear, independent of the accident itself, indicating negligence on the part of the defendant—in such event there is sufficient proof to authorize the submission of the question of the defendant's negligence to the jury." *McFarland v. Chesapeake, etc., R. Co.*, (1917) 177 Ky. 551, 197 S. W. 944.

Fellow servant doctrine.—In general.—Under the Employers' Liability Act, the action lies for "injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees

of such carrier." *Kanawha, etc., R. Co. v. Kerse*, (1916) 239 U. S. 576, 36 S. Ct. 174, 60 U. S. (L. ed.) 448.

The Act by this language abrogated the common-law rule known as the fellow-servant doctrine by placing the negligence of a coemployee upon the same basis as the question of the defendant's negligence the negligence of the employer. Therefore under this statute as a general rule, an employer is liable to his employee for an injury resulting from the negligence of a fellow servant. *Chesapeake, etc., R. Co. v. De Atley*, (1916) 241 U. S. 310, 36 S. Ct. 564, 60 U. S. (L. ed.) 1016; *Illinois Cent. R. Co. v. Skaggs*, (1916) 240 U. S. 66, 36 S. Ct. 249, 60 U. S. (L. ed.) 528; *Southern R. Co. v. Derr*, (C. C. A. 6th Cir. 1917) 240 Fed. 73, 153 C. C. A. 109; *Virginian R. Co. v. Linkous* (C. C. A. 4th Cir. 1915) 230 Fed. 88, 144 C. C. A. 386; *Harris v. Cincinnati, etc., R. Co.*, (1917) 176 Ky. 846, 197 S. W. 464; *Lanis v. Illinois Cent. R. Co.*, (1916) 140 La. 1, 72 So. 788; *Elliott v. Illinois Cent. R. Co.*, (1916) 117 Miss. 426, 71 So. 741; *Koukouris v. Union Pac. R. Co.*, (1916) 193 Mo. App. 495, 186 S. W. 545; *Kinney v. Hudson River R. Co.*, (1916) 98 Misc. 11, 162 N. Y. S. 42; *Gulf, etc., R. Co. v. Hall*, (Tex. Civ. App. 1917) 196 S. W. 613; *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528; *Anest v. Columbia, etc., R. Co.*, (1916) 89 Wash. 609, 154 Pac. 1100; *Hovaneck v. Great Northern R. Co.*, (1917) 165 Wis. 511, 162 N. W. 927.

Fellow-servant in intrastate commerce.—A right of recovery under the statute arises if the injury is suffered while the carrier is engaged in interstate commerce and while the employee is employed by the carrier in such commerce, although the causal negligence is that of a coemployee engaged in intrastate commerce. *Central Vermont R. Co. v. White*, (1915) 238 U. S. 507, 35 S. Ct. 865, 59 U. S. (L. ed.) 1433, Ann. Cas. 1916B 252; *Illinois Cent. R. Co. v. Skaggs*, (1916) 240 U. S. 66, 36 S. Ct. 249, 60 U. S. (L. ed.) 528, *affirming* (1914) 125 Minn. 532, 147 N. W. 1135.

Limitation on liability.—The master is not liable for any and every negligent act of his servant. It is necessary to show that the negligence was committed by the servant while engaged in the service and in some way connected with the doing of the service. *Arizona Eastern R. Co. v. Bryan*, (1916) 18 Ariz. 106, 157 Pac. 376.

Assault by fellow servant.—A recovery cannot be had under this section for a willful and criminal assault by one employee upon another where, on the undisputed facts, the assault was not committed in the course or scope of his employment, nor in the furtherance of the company's business. *Roebuck v. Atchison, etc., R. Co.*, (1917) 99 Kan. 544, 162 Pac. 1153, L. R. A. 1917E 741.

Liability of fellow servant.—Independent of any statute, a person is liable in damages for any negligent act of his own which causes injury to his fellow servant. *Lusk v. Osborn*, (1917) 127 Ark. 170, 191 S. W. 944.

Particular instances.—The negligent handling of cars by agents and employees of a railroad which results in injury to another employee is actionable under this law, and a failure to warn may likewise be actionable thereunder. *Young v. Lusk*, (1916) 268 Mo. 625, 187 S. W. 849.

So where the conductor of a train, whose duty it was to look out for the safety of a brakeman working on the same train with him, gave the signal to the engineer to back up the train while the brakeman was between the cars, it was held that he was guilty of negligence rendering the company liable, where, in view of the circumstances, he had good reason to believe, if he had exercised the required care, that the brakeman was in that position. *Illinois Cent. R. Co. v. Norris*, (C. C. A. 7th Cir. 1917) 245 Fed. 926.

In the absence of evidence rendering applicable the provisions of a statute allowing the operation of a locomotive to its destination when the headlight becomes defective while in transportation, it is negligence, as a matter of law, to operate a locomotive after dark without a headlight, and although such provision might operate to relieve the company of liability for the penalty provided by the act, such operation might nevertheless be negligent. *Solalrin v. Ann Arbor R. Co.*, (1916) 194 Mich. 458, 160 N. W. 552.

Where the engineer knows that the track ahead is obstructed by the track men and their operations upon it, in a manner to endanger lives and property if care is not observed, he has no right to indulge in any presumption of a safe track, but must advance cautiously, keeping a lookout for signals to stop. So it has been said: "The great current of authority . . . recognizes the sensible doctrine that the presumption of a clear track cannot be allowed to shield the defendant against liability where the act in question did not proceed from such presumption but with knowledge of the actor—the engineer—that the track ahead was not clear, and that it was necessary to keep a lookout." *Brightwell v. Lusk*, (1916) 194 Mo. App. 643, 189 S. W. 423.

V. ACTIONS

Persons entitled to sue—In general.—Necessity of showing of dependency and pecuniary loss.—"Notwithstanding the pecuniary loss may be more or less, according to the degree of the dependency of the beneficiaries of the first and second classes upon deceased, and the amount of recovery therefor may be increased or diminished accordingly, the act does not make their right contingent upon depend-

ency, as it does that of the next of kin. Therefore, to sustain an action for the benefit of the first two classes, it need only appear that they have sustained some pecuniary loss. The relation of the beneficiary to deceased may be such that such loss will be presumed; but, if it is not, then it must be alleged." *Berg v. Atlantic Coast Line R. Co.*, (S. C. 1917) 93 S. E. 390.

Personal representative.—A cause of action for the death of an employee must be prosecuted by a personal representative and not by beneficiaries. *Treadway v. St. Louis, etc., R. Co.*, (1917) 127 Ark. 211, 191 S. W. 930; *Denver, etc., R. Co. v. Wilson*, (1917) 62 Colo. 492, 163 Pac. 857.

Power of administrator to compromise.—An administrator may compromise and accept settlement of an unliquidated claim for damages without special authority from the Probate Court. Where the personal representative acts in good faith, those who would impeach his conduct must show fraud or mistake or such gross negligence as would amount to fraud. *Treadway v. St. Louis, etc., R. Co.*, (1917) 127 Ark. 211, 191 S. W. 930.

Appointment of administrator.—Under a statute authorizing a county judge to appoint a temporary administrator and to define the powers conferred by such statute it has been held that such a court has power to appoint a temporary administrator to prosecute a suit under this Act. *Gulf, etc., R. Co. v. Cooper*, (Tex. Civ. App. 1917) 191 S. W. 570.

Effect of settlement by one of beneficiaries.—After suit is brought under the federal Employers' Liability Act by the personal representative of the decedent to recover damages for his death, a settlement by one of the beneficiaries of the action in no way affects the right of the personal representative to proceed with the action to final judgment. *Pittsburgh, etc., R. Co. v. Collard*, (1916) 170 Ky. 239, 185 S. W. 1108.

Widow cannot sue in individual capacity.—The federal Employers' Liability Act does not give to the widow of the deceased, as such, any right of action whatever for his death, but gives that right solely to the personal representative of the deceased, and therefore, when in a suit by the widow the facts are shown to be such that the Act of Congress applies, such suit cannot be maintained by her because she has, in her own right, no cause of action. *Denver, etc., R. Co. v. Wilson*, (1917) 62 Colo. 492, 163 Pac. 857; *Hardy v. Atlanta, etc., R. Co.*, (1917) 20 Ga. App. 303, 93 S. E. 18; *Giersch v. Atchison, etc., R. Co.*, (1916) 98 Kan. 452, 158 Pac. 54.

As under the federal Act suit can be prosecuted only by the personal representative of the deceased, an action by the wife individually, based upon the authority of a state statute thus superseded,

is brought by a person not a real party in interest, and without right to maintain it. *Hein v. Great Northern R. Co.*, (1916) 34 N. D. 440, 159 N. W. 14.

If when injured the deceased was engaged in interstate commerce, the right of recovery depends on the federal Employers' Liability Act, which only permits suit by a personal representative for the benefit of surviving widow or husband and children if there be such, and it has been decided that it is error, in an action by a widow in behalf of herself, as next friend for her minor children and for the use and benefit of his parents, to refuse to direct the jury to return a verdict for the defendant on the special plea that if deceased was engaged in interstate commerce, the plaintiff has no right to maintain the suit. *Pecos, etc., R. Co. v. Rosenbloom*, (1916) 240 U. S. 439, 36 S. Ct. 390, 60 U. S. (L. ed.) 730.

Widow suing individually may amend by making herself personal representative.—"It has been held that a plaintiff suing in her individual capacity under the state law may amend her complaint by making herself a party plaintiff as the personal representative of deceased, and alleging the cause of action under both the state and federal statutes." *Denver, etc., R. Co. v. Wilson* (1917) 60 Colo. 492, 163 Pac. 857. And such amendment does not constitute a new action so as to make the statute of limitations a bar to the continuance of the suit. *St. Louis, etc., R. Co. v. Smith*, (Tex. Civ. App. 1914) 171 S. W. 512.

Effect of abandonment of wife.—Although it appears in evidence that after a husband had abandoned his wife and child, the wife had lived with another man and that she had another child, such facts do not warrant the court in holding, as matter of law, that she had forfeited her right of support by her conduct. *Gilham v. Southern Ry. Co.*, (S. C. 1917) 93 S. E. 865.

Parents.—The right of a parent under the Act to recover for the death of a child is subordinated to the right of the widow or child of the person killed to recover for such death, i. e., if there be a surviving widow or surviving child or children, the action shall be maintained exclusively for their benefit, and to the exclusion of the other classes of beneficiaries named therein. *Davis v. Cincinnati, etc., R. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061.

Where, under a state statute, a father is entitled to his son's earnings during minority he has a right of action suing as administrator under the federal Act to recover damages in case of his son's death due to the carrier's negligence. *Minneapolis, etc., R. Co. v. Gotschall*, (1917) 244 U. S. 66, 37 S. Ct. 598, 61 U. S. (L. ed.) 995.

Pecuniary loss to a mother will not support recovery by her where the son left a widow, and although they had lived apart, no claim was made that rights and liabilities consequent upon marriage had disappeared under the local law. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, reversing (Miss. 1916) 71 So. 913.

"Next of kin dependent upon such employee."—It is said that grammatically construed, the word "dependent" refers only to the next of kin. *Berg v. Atlantic Coast Line R. Co.*, (S. C. 1917) 93 S. E. 390.

Who are next of kin is to be determined by the legislation of the various states to whose authority that subject is normally committed. The absence of a definition in the Act plainly indicates the purpose of Congress to leave the determination of that question to state law. *Seaboard Air Line Ry. v. Kenney*, (1916) 240 U. S. 489, 36 S. Ct. 458, 60 U. S. (L. ed.) 762.

Where it was suggested that if the state law be held applicable to determine next of kin, the right should have been recognized to seek to trace the paternity of an illegitimate child so as to make the asserted father the parent under the statute it was said that this contention might well be disposed of by saying that no such contention seemed to have been urged in either of the courts below and the court further declared: "But aside from this, the entire want of merit of the proposition is at once demonstrable from a two-fold point of view: (a) because it was necessarily foreclosed by the ruling of the court below as to the state law concerning the next of kin and the right of the brothers and sister of the illegitimate child to inherit from him solely because of a common motherhood, a ruling which excluded by necessary implication the right now contended for. (b) Because as no provision, either of the state law or of the common law, supporting the asserted right is referred to, the suggestion may be taken as simply a typical illustration of the confusion of thought involved in the main proposition relied upon which we have previously adversely disposed of." *Seaboard Air Line Ry. v. Kenney*, (1916) 240 U. S. 489, 36 S. Ct. 458, 60 U. S. (L. ed.) 762.

"A person is dependent upon another when he has the moral right to rely and does rely upon such other for support either, in whole or in part. *Murphy v. Nowak*, [1906] 223 Ill. 301, 307, 79 N. E. 112, 7 L. R. A. (N. S.) 398. Now the mere fact that deceased had at different times sent her an occasional sum does not establish dependency." *Smith v. Pryor*, (1916) 195 Mo. App. 259, 190 S. W. 69.

"Where it is necessary to show only pecuniary loss in the case of a husband, wife, children, or parents, yet, in the case

of one, who is not in the above category, dependency must also be shown and be proved like any other fact." *Smith v. Pryor*, (1916) 195 Mo. App. 259, 190 S. W. 69.

"Mere occasional gifts do not make recipient 'dependent' upon the giver within the meaning of the statute. True, the act does not require that the dependency must be complete or entire. A partial dependency will be sufficient to furnish the basis of an award in some amount. But dependency, either in whole or in part, must exist." *Smith v. Pryor*, (1916) 195 Mo. App. 259, 190 S. W. 69.

The financial condition of the deceased and of members of his family is of value as tending to show whether they depended on him for support, and for the purpose of establishing such a condition of dependency evidence has been received that he left no insurance or practically none and that neither he nor his wife or children had any property. *Dutton v. Atlantic Coast Line R. Co.*, (1916) 104 S. C. 16, 88 S. E. 263.

In a case in which it was suggested in the United States Supreme Court that there was no proof tending to show a dependent relation between the next of kin who were recognized and the deceased so as to justify recovery under the statute that court declared: "It suffices to say that it was expressly foreclosed by the finding of the jury sanctioned by the trial court and was not questioned in the court below, and at all events involves but a controversy as to the tendencies of all the proof foreclosed by the action of both courts which we would not reverse without a clear conviction of error, which after an examination of the record on the subject we do not entertain." *Seaboard Air Line Ry. v. Kenney*, (1916) 240 U. S. 489, 36 S. Ct. 458, 60 U. S. (L. ed.) 762.

A half brother of a person killed while in the employ of a carrier engaged in interstate commerce is not within the terms of this Act. *New Orleans, etc., R. Co. v. Jones*, (1916) 111 Miss. 852, 72 So. 681.

Joinder of carrier and employee as defendants—An employee of a railway company engaged in interstate commerce cannot maintain a joint action against the company and its engineer under this Act, where concurring negligence of both defendants is alleged and also a violation of the federal Safety Appliance Act. *Lee v. Central of Georgia R. Co.*, (Ga. 1917) 94 S. E. 558.

Procedure in general.—"Ordinary incidents of state procedure" are not excluded by this Act. *Dickinson v. Stiles*, (1918) 246 U. S. 631, 38 S. Ct. 415, 62 U. S. (L. ed.) 908, affirming (1917) 137 Minn. 410, 163 N. W. 791, and holding that a Minnesota statute giving an attorney a lien for his fees upon his client's cause of action which is not defeated by the latter's set-

tlement of the case, may be applied to a cause of action arising under this Act.

The federal Employers' Liability Act having conferred on state courts a jurisdiction concurrent with that of the federal courts in actions under the statute, and having made no regulation of the practice in those actions, the practice in an action in a state court under the statute is regulated by the law of the forum. *Chesapeake, etc., Ry. Co. v. De Atley*, (1916) 241 U. S. 310, 36 S. Ct. 564, 60 U. S. (L. ed.) 1016.

In a case founded on the Act of Congress, constructions given the Act, and of proceedings thereunder, by the federal courts, are controlling. *Ft. Worth, etc., R. Co. v. Bird*, (Tex. Civ. App. 1917) 196 S. W. 597.

When Congress gave the state courts co-ordinate jurisdiction in this class of cases with the federal courts, by necessary implication it adopted the procedure and practice of the state courts for the trial of such cases. *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244.

State courts may, in an action under the federal Act, apply the rules of procedure which obtain in the administration of state laws, as for instance in respect to the sufficiency of evidence. *Mulligan v. Atlantic Coast Line R. Co.*, (1916) 104 S. C. 173, 88 S. E. 445; *Howell v. Atlantic Coast Line R. Co.*, (1914) 99 S. C. 417, 83 S. E. 639.

And where a state statute deals only with a rule of evidence it is proper to charge the jury in accordance therewith, in an action under this Act. *New Orleans, etc., R. Co. v. Scarlet*, (1917) 115 Miss. 285, 76 So. 265.

In another case it is said: "Whether the difficulty should be met by admitting the testimony of expert witnesses, or by receiving in evidence the standard interest and annuity tables in which present values are worked out at various rates of interest and for various periods covering the ordinary expectancies of life, it is not for us in this case to say. Like other questions of procedure and evidence, it is to be determined according to the law of the forum. But the question of the proper measure of damages is inseparably connected with the right of action, and in cases arising under the Federal Employers' Liability Act it must be settled according to general principles of law as administered in the federal courts." *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1016.

A decision that the plaintiff has no remedy under this Act does not preclude him from seeking his remedy under the state law, if he has any. *Chesapeake, etc., R. Co. v. Harmon*, (1917) 174 Ky. 850, 192 S. W. 817; *Illinois Cent. R. Co. v. Kelly*, (1916) 167 Ky. 745, 181 S. W. 375.

"It is now settled that, where the complaint declares under the federal law, failure to sustain it under such law is not fatal, but recovery may still be had under the state law, if the pleadings and proof are sufficient under the state law." *Alexander v. Great Northern R. Co.*, (1916) 51 Mont. 565, 154 Pac. 914.

Election.—Where, under the pleading, a plaintiff may proceed either under this Act or at common law, it has been held to be error to refuse a motion requiring him to elect which he will proceed under, but it is also declared that it is not reversible error if not prejudicial to the substantial rights of the defendant. *Cincinnati, etc., R. Co. v. Clarke*, (1916) 169 Ky. 662, 185 S. W. 94.

Pleadings.—*In general.*—It is essential to a case under the statutes of the United States, not only that the defendant was at the time engaged in interstate commerce, but also (as the fact might be the defendant was likewise engaged in transportation within the state) that the plaintiff was, at the time the cause of action arose, employed in interstate commerce work. This is settled beyond the necessity of the citation of authorities laying down the ruling. *Lucchetti v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 233 Fed. 137.

And the pleadings must show a case within the federal statute. *Hogarty v. Philadelphia, etc., Ry. Co.*, (1916) 255 Pa. St. 236, 99 Atl. 741.

So to authorize the recovery, under the federal statute known as the "Employers' Liability Act," of damages by an employee for an injury sustained through the negligence of a common carrier, it must be alleged and proved that the injury was suffered while the employee was engaged in interstate commerce. It is not sufficient that the carrier in whose service the injury is sustained is engaged in interstate commerce. The true test is, is the work or service, in performing which the employee is injured, a part of the interstate commerce in which the carrier is engaged? *Illinois Cent. R. Co. v. Kelly*, (1916) 167 Ky. 745, 181 S. W. 375. See also *Walker v. Iowa Cent. R. Co.*, (S. D. Ia. 1917) 241 Fed. 395; *Cincinnati, etc., R. Co. v. Gross*, (Ind. App. 1916) 111 N. E. 653.

The plaintiff's pleading must allege that the defendant was a common carrier engaged in interstate commerce or state facts from which such conclusion may reasonably be inferred. *Cincinnati, etc., R. Co. v. Tucker*, (1916) 168 Ky. 144, 181 S. W. 940.

The complaint must allege that the employee was engaged in interstate commerce. *Walker v. Iowa Cent. R. Co.*, (S. D. Ia. 1917) 241 Fed. 395.

Statute need not be expressly referred to.—It is not necessary, in order to entitle a plaintiff to a recovery under the

federal Employers' Liability Act, that the statute should be expressly referred to in the complaint, as the court is presumed to be cognizant of the enactment, and where the facts alleged bring the case within the Act, full effect must be given to it. *Wagner v. Chicago, etc., R. Co.*, (1917) 277 Ill. 114, 115 N. E. 201; *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411; *Hogarty v. Philadelphia, etc., R. Co.*, (1916) 255 Pa. St. 236, 99 Atl. 741.

Because good faith is presumed, it has been held that a single count, which states facts sufficient to make a case either under the Act of Congress or under the state statutes and common law, states a case arising under the Act of Congress. *Flas v. Illinois Cent. R. Co.*, (D. C. Neb. 1916) 229 Fed. 319.

The general laws, whether state or federal, must be considered. It is not necessary that these laws be mentioned or in any way identified in the pleading. It is only required to state the facts which bring the case within them. *Pipes v. Missouri Pac. R. Co.*, (1916) 267 Mo. 385, 184 S. W. 79.

Where a declaration was attacked because of the failure of the pleader to allege a duty on the part of the conductor to the brakeman and its violation, it was held that as the plaintiff alleged facts to show that the carrier was engaged in interstate commerce at the time of the injury, and the Act referred to unquestionably applied and governed the rights of the parties to this action, it was therefore unnecessary to assert in the declaration the particular duty which the conductor owed to the brakeman, for Congress by this Act, imposed a liability on the railroad in case injury resulted to one employee through the negligence of another. *Illinois Cent. R. Co. v. Norris*, (C. C. A. 7th Cir. 1917) 245 Fed. 926, 158 C. C. A. 214.

So it is not necessary for a defendant in such an action to plead affirmatively either the federal Employers' Liability Act or its engagement in interstate commerce in order to raise the bar of the exclusive application of the federal Employers' Liability Act against the maintenance of an action under the state Employers' Liability Act. *Chrosziel v. New York Cent., etc., R. Co.*, (1916) 174 App. Div. 175, 159 N. Y. S. 924; *Gear v. St. Louis, etc., Ry. Co.*, (Tex. 1917) 194 S. W. 939.

Where the case made by the evidence is within this Act, the defendant is entitled to the benefit of its provisions, though neither party has pleaded the Act. *Hein v. Great Northern R. Co.*, (1916) 34 N. D. 440, 159 N. W. 14.

Joinder of causes of action.—A complaint against two defendants, alleging that their concurrent negligence caused an

injury to the plaintiff, is good against a demurrer for misjoinder of causes, though the liability of one defendant rests upon the federal Employers' Liability Act, and that of the other upon the common law. *Doyle v. St. Paul Union Depot Co.*, (1916) 134 Minn. 461, 159 N. W. 1081.

A party may have two causes of action, which, although growing out of the same fact occurrences, are distinct, separate, and different. One of them, for illustration, may arise out of the general principles of the law of negligence, and the other out of the provisions of a statute, state or federal. He may have the right to assert either or both. If he asserts one or both, and makes a slip in pleading his averments of facts, he may amend. If, however, he brings his action for the one cause, and wishes to change to the other, it is clear he is not amending the pleadings in the action brought, but is bringing in a new cause of action. *Lucchetti v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 233 Fed. 137.

Sufficiency of complaint generally.—Where a complaint alleged that plaintiff was a towerman, and as part of his duties was required to pump water by means of a gasoline engine into a water tank for use on locomotive engines engaged in interstate commerce, it was declared that the inference might be drawn from such allegations that the water was being pumped into the tank for the immediate use of locomotives engaged in interstate commerce, and that such use was not dependent upon any remote possibilities. *Collins v. Erie R. Co.*, (W. D. N. Y. 1917) 245 Fed. 811.

Where a petition showed that appellant was a carrier railroad operating a line of road from Texas to New Mexico, and that appellee was injured while employed in maintaining this line of road in repair, and the appellant answered that it was so operating the road as an interstate commerce carrier, and admitted plaintiff was so at work, it was said: "The allegation that a line of road runs from one state to another is *prima facie*, we think, an allegation that the road was engaged in interstate transportation. The fact that he was employed in repairing that line of road when injured, as a section hand thereon, will be sufficient to show such injury 'while' employed in interstate commerce, if the law attached to such labor the character of interstate commerce." *Chicago, etc., R. Co. v. Cosio*, (Tex. Civ. App. 1916) 182 S. W. 83.

Answer.—While a plaintiff pleading only a common-law right of action against a railroad company may not invoke the federal Employers' Liability Act, the company in its defense may, of course, to defeat the action rely upon the Act of Congress, if it can show, or the testimony offered by the plaintiff shows, that it was

engaged in interstate commerce at the time the plaintiff was injured. *Hogarty v. Philadelphia, etc., R. Co.*, (1916) 255 Pa. St. 236, 99 Atl. 741.

But where the defendant alleged in his answer that the plaintiff "was engaged in handling engines and cars used and engaged in interstate commerce and that the rights of the plaintiff and the liability of the defendant are controlled by the acts of Congress known as the Employers' Liability Act," it was declared that these allegations did not deny plaintiff's right to recover, and, at most, only stated a proposition of law dependent upon the evidence, that they did not controvert any allegations in plaintiff's petition, and hence no issue was thereby joined by the pleadings. *Wichita Falls, etc., R. Co. v. Puckett*, (1916) 53 Okla. 463, 157 Pac. 112.

Particular allegations.—Negligence.—In an action under this section it has been held that negligence may be averred in a very general way and that the *quo modo* of negligence need not be defined. *Western Ry. v. Mays*, (1916) 197 Ala. 367, 72 So. 641.

Pecuniary loss.—There should, in suits founded on this Act, be pleadings averring the pecuniary losses which plaintiffs expect to prove. *Nashville, etc., R. v. Anderson*, (1915) 134 Tenn. 666, 185 S. W. 677.

As the law does not presume financial loss to a parent from the death of an adult son it must be alleged. But it seems that it is not necessary to allege that the parents were dependent on the son. *Berg v. Atlantic Coast Line R. Co.*, (S. C. 1917) 93 S. E. 390.

When the petition shows the relation of the dependent to the deceased, a general averment that the person for whose benefit the action was brought was dependent upon the deceased and had a pecuniary interest in his life and suffered a pecuniary loss by his death, is sufficient without setting out in detail the reasons showing the dependency or the pecuniary loss. *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126.

In *Illinois Cent. R. Co. v. Steward*, (C. C. A. 8th Cir. 1915) 223 Fed. 30, 138 C. C. A. 444, the allegations were held sufficient to show a cause of action in favor of next of kin, within the federal Act.

Amendments.—If an amendment merely expands or amplifies what was alleged in support of the cause of action already asserted, it relates back to the commencement of the action and is not affected by the intervening lapse of time. But if it introduces a new or different cause of action, it was the equivalent of a new suit, as to which the running of the limitation was not theretofore arrested. *Seaboard Air Line Ry. v. Renn*, (1916) 241 U. S. 290, 36 S. Ct. 57, 60 U. S. (L. ed.) 1006.

The rule is well settled that an amendment to meet the proofs is within the sound discretion of the trial judge. *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298.

A refusal to allow an amendment, for the purpose of bringing a case under the federal Act, has been held proper where, if allowed and the case had proceeded under that Act, there would have been no presumption of negligence against the railroad company arising upon proof of injury to the employee; and, as there was no substantive proof that the defendant was guilty of any act of negligence, the nonsuit was proper. *Williams v. Western, etc., R. Co.*, (1917) 20 Ga. App. 726, 93 S. E. 555.

If the declaration brings the case within the Employers' Liability Act the fact that it appeared as an amendment to one that alleged the same facts with the exception of the plaintiff's coming from beyond the state raises no federal question. *Kansas City Western R. Co. v. McAdow*, (1916) 240 U. S. 51, 36 S. Ct. 252, 60 U. S. (L. ed.) 520.

It has been held that in an action for death brought under a state statute an amendment may be allowed so as to bring the case under this Act and will relate back to the time of the filing of the original petition. *Lanis v. Illinois Cent. R. Co.*, (1916) 140 La. 1, 72 So. 788.

Where an action was brought against a railroad to recover damages for death under a state law alleging the defendant to be an intrastate railroad and two years after death the plaintiff was allowed by the court to amend the declaration by alleging that the deceased and defendant were engaged in intrastate commerce, such amendment was held to have been properly allowed and it was declared that a demurrer to a plea of the statute of limitations should have been sustained. The court said: "The only question presented for our review and decision is whether the cause of action under the amended declaration was barred by the two-year statute of limitations under the federal Employers' Liability Act. It will be observed here that the only amendment made to the original declaration was the allegation that the injury occurred while the parties were engaged in interstate commerce, instead of intrastate commerce. This amendment did not present a new or different statement of facts upon which the action was based, but merely amended the declaration, so as to come within the operation of the federal Employers' Liability Act, instead of the state law. The allegations contained in the original declaration did not support a cause of action under the federal law, but the amendment is not inconsistent with the purpose and relief originally sought by the declaration.

It appears, therefore, that the amendment did not constitute a new cause of action, inconsistent with that set forth in the original declaration." *Broom v. Southern R. Co.*, (1917) 115 Miss. 493, 76 So. 525.

Where the declaration as amended contained two counts, one under the common law of the state and the other charging negligence under the Employers' Liability Act, it was decided by the United States Supreme Court that if it had been shown that the injury had been received in interstate commerce, the defendants would have been entitled to insist upon the applicable federal law as the exclusive measure of their liability, and they would not have lost this right merely because the plaintiff had seen fit to present the claim "in an alternative way" by means of separate counts. *Osborne v. Gray*, (1915) 241 U. S. 16, 36 S. Ct. 486, 60 U. S. (L. ed.) 865.

And where an action is brought under a state statute to recover damages for the death of a husband it has been held that the provisions of this section operate as a bar to the allowance of an amendment filed more than two years after the commencement of the action, it appearing that the amended pleadings and the previous pleadings are not subject to the same defenses. *Ft. Worth, etc., Ry. Co. v. Bird*, (Tex. Civ. App. 1917) 196 S. W. 597.

And where the original petition did not allege facts from which it could be fairly inferred that a cause of action was stated under the federal Act and the cause has been finally determined by the Circuit Court of Appeals, the filing of an amended petition so as to state a cause of action under that Act will not be permitted, as the bar of the statute then applies. *Walker v. Iowa Cent. Ry. Co.*, (S. D. Ia. 1916) 241 Fed. 395.

Where the defendant objects that the original complaint did not state a cause of action under the Act of Congress, that with the amendment the complaint would state a new cause of action under that Act, and that, as more than two years had elapsed since the right of action accrued, the amendment could not be made the medium of introducing this new cause of action consistently with the provision in section 6 that "no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued," whether in what was done this restriction was in effect disregarded is a federal question and subject to re-examination in the United States Supreme Court, however much the allowance of the amendment otherwise might have rested in discretion or been a matter of local procedure. *Seaboard Air Line Ry. v. Renn*, (1916) 241 U. S. 290, 36 S. Ct. 567, 60 U. S. (L. ed.) 1006.

An amendment to a petition alleging as an additional ground for recovery the negligence of a fellow servant does not introduce a new cause of action, so as to come within the operation of the bar of the statute. *Ft. Worth Belt Ry. Co. v. Jones*, (Tex. Civ. App. 1916) 182 S. W. 1184.

Permitting plaintiff to amend her declaration more than two years after the accident, to include a claim for damages for the pain and suffering sustained by the decedent prior to his death as the result of the injuries received has been held no error. *Washington, etc., Co. v. Scala*, (1916) 45 App. Cas. (D. C.) 484.

Where the declaration alleged that the injuries received caused the deceased to suffer "intense pain" and it was subsequently amended by an added allegation that the injuries caused him "conscious pain and suffering" it was held that the difference between the two, if there was any difference, was too elusive in the practical administration of justice, and the claim that the amendment added a new cause of action to the declaration was too fanciful for discussion, being at most only a slight elaboration of a probably sufficiently claimed element of damage. *Washington Ry., etc., Co. v. Scala*, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360.

The intervention of a temporary administratrix more than two years after the death of the deceased does not amount to the introduction of a new cause of action. *Ft. Worth Belt Ry. Co. v. Jones*, (Tex. Civ. App. 1916) 182 S. W. 1184.

So a change from a widow as party plaintiff to the administrator as party plaintiff is held not to be a change of the cause of action. *Nashville, etc., R. Co. v. Anderson*, (1916) 134 Tenn. 666, 185 S. W. 677, Ann. Cas. 1917D 902.

Where a complaint alleges one of the essential facts to show a cause of action under this Act but by mistake omits the other, an amendment may properly be allowed to supply the omission. *Lucchetti v. Philadelphia, etc., Ry. Co.*, (E. D. Pa. 1916) 233 Fed. 137.

Amendment on appeal.—Where the plaintiff has proceeded in the trial court on the theory of an action on the case for personal injuries, he will not be allowed to amend his declaration on appeal so as to make it a declaration under the federal Employers' Liability Act. *Rowley v. Shepardson*, (1916) 90 Vt. 25, 96 Atl. 374.

Evidence.—In general.—Where the allegations of the complaint stamp the case as brought under the provisions of the federal Employers' Liability Act to maintain it as such, evidence that at the time concerned the company was engaged and the decedent was employed in interstate commerce is indispensable. *Alexander v. Great Northern R. Co.*, (1916) 51 Mont. 565, 154 Pac. 914.

And where in an action brought by a widow to recover for the death of her husband who was killed while engaged in the work of switching, the answer consisted of a general denial and the averments of contributory negligence and assumption of risk, and in the defendant's testimony it appeared that the car against which the deceased was crushed was at the time an interstate car, which evidence was first received over objection and afterwards stricken out, it was held that it was properly received and erroneously stricken out. *Giersch v. Atchison, etc., R. Co.*, (1916) 98 Kan. 452, 158 Pac. 54.

Variance between pleadings and proof.—The evidence must correspond to the allegations and be confined to the point in issue. *St. Louis Merchants' Bridge Terminal Co. v. Schuerman*, (C. C. A. 8th Cir. 1916) 237 Fed. 1, 150 C. C. A. 203.

And where the plaintiff's petition in a suit for damages for personal injuries, against a railroad company, was drawn under the state law, and the plaintiff's proof showed that he was injured while engaged in interstate commerce, it was held that the plaintiff should have amended his petition to conform to the proof; but, having failed to so amend his petition, the defendant's motion for a peremptory instruction should have been sustained. *Cincinnati, etc., R. Co. v. Tucker*, (1916) 168 Ky. 144, 181 S. W. 940.

But it is held that a variance between pleading and proofs is immaterial unless such as to mislead the opposite party. *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298.

Proof of negligence may be either by direct or circumstantial evidence. *Mulligan v. Atlantic Coast Line R. Co.*, (1916) 104 S. C. 173, 88 S. E. 445.

In an action to recover damages for injuries alleged to be due to a defective roadbed, evidence as to the condition of the tracks at the time of the injury and of its repair subsequent thereto has been held admissible, not as an implied admission of negligence on the part of the defendant but as tending to corroborate the plaintiff, as a witness in his own behalf, as to the condition at the time of the accident. *West v. Atlantic Coast Line R. Co.*, (1917) 174 N. C. 125, 93 S. E. 479.

The fact that plaintiff's signed account of the accident given defendants' representative expressed the opinion that no one was to blame for the accident, and that the negligence alleged in his letter refusing defendants' offered adjustment was not that asserted here, while seriously discrediting plaintiff's testimony, as to the fact of the asserted negligence, does not legally estop him from such assertion. *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298.

Evidence bearing on question of damages.—Evidence of the age, experience,

habits, health, character and earning capacity of a deceased person is competent to show pecuniary loss sustained by his dependents, and the life tables may be introduced to show that the expectancy of the deceased covers that of his dependents, when the period of pecuniary loss is the life expectancies of the dependents. *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

Similarly in estimating the pecuniary loss sustained by the widow, it was held to be competent to introduce evidence on the subject of the earning capacity, age, health, habits, character, expectancy of life and mental and physical disposition to labor of the deceased. *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126.

Where the death of an injured employee is the basis of the action, any standard table of mortality reasonably authenticated, covering the class of persons to which deceased belonged, is admissible in evidence on the question of the quantum of damages recoverable. *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

Declarations of the decedent that he intended to go to work and to contribute to the support of both his father and mother will support a finding of damages in their favor in an action under the federal Employers' Liability Act. *Pittsburgh, etc., R. Co. v. Collard*, (1916) 170 Ky. 239, 185 S. W. 1108.

Where there was evidence that the plaintiff lost his arm by reason of the injury complained of, and was unfitted for work of the character which he had previously done, and that he had done some work of different sorts, there was no error in admitting evidence that since the December preceding the trial he had had no active employment, coupled with the statement that he had attempted to get work during that period but had been unable to do so. *Macon, etc., R. Co. v. Musgrove*, (1916) 145 Ga. 647, 89 S. W. 767.

On the trial it was error, over objection, to allow the plaintiff to testify that he had a wife and child. *Macon, etc., Co. v. Musgrove*, (1916) 145 Ga. 647, 89 S. W. 767.

In an action for damages for death involving the question of the father's reasonable expectation of pecuniary benefits from his deceased son, an agreed judgment of divorce between the decedent's father and mother, by which the father surrendered the decedent to his mother during his minority was held not to be admissible. *Pittsburgh, etc., R. Co. v. Collard*, (1916) 170 Ky. 239, 185 S. W. 1108.

And in an action by a personal representative to recover damages for the benefit of the father and mother of the decedent, the deposition of the decedent given in the action of divorce between his

father and mother was held to be properly excluded, because it did not illustrate decedent's general attitude of mind towards his father, but only his attitude of mind growing out of particular circumstances which had long since passed away. *Pittsburgh, etc., R. Co. v. Collard*, (1916) 170 Ky. 239, 185 S. W. 1108.

Burden of proof—*In general*.—"It is incumbent upon the plaintiff to show affirmatively all the elements of the right to recover. Unless the court can see that there is such evidence in the cause as will thoroughly support a verdict, if the jury should find it to be credible and proper to be made the basis of their finding, it becomes an imperative duty of the court to instruct the jury to find their verdict for the defendant." *Western Maryland R. Co. v. Sanner*, (1917) 130 Md. 581, 101 Atl. 587.

The only burden, however, upon the plaintiff to entitle him to a verdict is one to support his material allegations by a fair preponderance of proof. *Hubert v. New York, etc., R. Co.*, (1916) 90 Conn. 261, 96 Atl. 967.

Again, instruction that the jury could not find for plaintiff in an action under the federal Employers' Liability Act unless they believed the preponderance of the evidence was in his favor, offered by the defendant, was properly refused. *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

Where the facts show the case may well have been within the statute, the initial burden is satisfied, and it is for the defendant to show the contrary. *Erie R. Co. v. Krysienski*, (C. C. A. 2d Cir. 1916) 238 Fed. 142, 151 C. C. A. 218.

Employee engaged in interstate commerce.—A plaintiff bringing an action under this statute assumes the burden of pleading and proving that at the time he was injured he was engaged in interstate commerce. *McBain v. Northern Pac. Ry. Co.*, (1916) 52 Mont. 578, 160 Pac. 654.

Negligence.—The burden of proving negligence is on the plaintiff. *Southern Ry. Co. v. Derr*, (C. C. A. 6th Cir. 1917) 240 Fed. 73, 153 C. C. A. 109; *Canadian Pac. R. Co. v. Thompson*, (C. C. A. 1st Cir. 1916) 232 Fed. 353, 146 C. C. A. 401; *Canadian Pac. Ry. Co. v. Thompson*, (C. C. A. 1st Cir. 1916) 232 Fed. 353, 146 C. C. A. 401; *Douvall v. Philadelphia, etc., R. Co.*, (1915) 43 App. Cas. (D. C.) 395; *Louisville, etc., R. Co. v. Rhoda*, (Fla. 1917) 74 So. 19; *Savannah, etc., Ry. v. McCoy* (1917) 20 Ga. App. 544, 93 S. E. 257.

Effect of state statutes.—As to the effect of a state statute as to the presumption of negligence and burden of proof in cases of injury or death caused in the operation of railroads it has been said: "A contract between the master and servant involves certain reciprocal duties

which, if not expressed, are clearly implied, and grow out of the relation between them. Among others on the part of the master is to exercise ordinary care to furnish his servant with a safe place to work, and to this end the master may adopt reasonable rules and regulations for the protection of the employees while in the performance of their duties. And it is the duty of the servant to exercise ordinary care for his own protection, and in so doing to obey the rules which the master has adopted and promulgated to insure the safety of the employee. . . . From the trend of these decisions, we believe the correct doctrine under the federal Employers' Liability Act is to hold that a prima facie case of negligence against a railway company is not established merely by proof of an injury in the operation of trains, and that such proof does not shift the burden upon the railway company to show that it was not negligent; but, on the contrary, plaintiff must show the actual existence of negligence on the part of the agents or employees of the carrier. Under the state statute, as construed by us, negligence is presumed upon proof of the injury which occurred in the operation or running of trains. . . . But such is not the case, as we understand it, under the federal Employers' Liability Act, since that Act contains no provision to that effect. . . . It is clear that in the absence of our statutes the burden of proof in this case would be the same as in all other cases, requiring a person who alleges damages on account of negligence to prove it. As these statutes have no application under the Employers' Liability Act, it follows that the instructions of the court applying the state statutes to the facts of this record were erroneous." *St. Louis, etc., R. Co. v. Steel*, (Ark. 1917) 197 S. W. 288.

Presumptions.—Under this Act there is no presumption of negligence against the carrier arising upon proof of injury to or death of an employee. *Southern Ry. Co. v. Derr*, (C. C. A. 6th Cir. 1917) 240 Fed. 73, 153 C. C. A. 109; *Williams v. Western, etc., R. Co.*, (1917) 20 Ga. App. 726, 93 S. E. 555; *Southern Ry. Co. v. Blackwell*, (1917) 20 Ga. App. 630, 93 S. E. 321; *Ivey v. Louisville, etc., R. Co.*, (1916) 18 Ga. App. 434, 89 S. E. 629; *Landrum v. Western, etc., R. Co.*, (1916) 146 Ga. 88, 90 S. E. 710.

But in the case of a yard switchman who had been in the employ of the company for twenty-five years and was killed on one of the company's tracks it was said: "He must have been thoroughly acquainted with the situation and familiar with the location of the tracks, the movement of trains and all the customs of the yard. That such a man should be run down and killed at a place where he knew every detail of the premises and of

the methods employed raises a presumption that some abnormal condition prevailed which was not to be expected, which he could not have foreseen and which he was not required to guard against by taking extraordinary precautions. That such a man would have remained on the track if an adequate warning had been given is contrary to all the impulses which govern the conduct of men of ordinary intelligence." *Delaware, etc., R. Co. v. Hughes*, (C. C. A. 2d Cir. 1917) 240 Fed. 941, 153 C. C. A. 627. As to the presumption of care arising from the instinct of self-preservation, see *Moore on Facts*, § 529 et seq.

In another case it was said that running a northbound train on the southbound track is not evidence of negligence, and all the employees of the railroad must take notice of the occasional necessity to make the change. Nevertheless, as that is not the usual method of running, the railroad company must take notice that their employees will naturally be somewhat less on guard against a northbound train running on a southbound track, and due care requires greater precautions. The case is thus distinguished from the cases holding that under ordinary conditions an engineer may assume that a man in the apparent possession of his faculties will get out of the way of an approaching train. Therefore it was held not to be unreasonable to hold a railroad company guilty of negligence where it could well be inferred from the testimony that the engineer, running a northbound train around a curve on a southbound track, saw the deceased on or very near the southbound track, and gave him no signal till it was too late. *Southern Ry. Co. v. McGuin*, (C. C. A. 4th Cir. 1917) 240 Fed. 649, 153 C. C. A. 447.

A statute in substance making proof of an injury prima facie proof of negligence on the part of the defendant is a rule of evidence, and since the *lex fori* governs in all matters of procedure, the court commits no error in charging the jury in accordance therewith. *New Orleans, etc., R. Co. v. Scarlet*, (1917) 115 Miss. 285, 76 So. 265.

The presumption of negligence arising under a state statute from the act of employing a minor in violation thereof has been said to have no application to an action under this section. *Maijala v. Great Northern R. Co.*, (1916) 133 Minn. 301, 158 N. W. 430.

Damages in action by employee — Measure of damages in general.—The plaintiff, in an action for personal injuries, is entitled to recover for his expenses incurred for medical attendance, a reasonable sum for his pain and suffering, and also a fair recompense for the loss of what he would otherwise have earned in his trade or profession and has been deprived of his capac-

ity for earning by the wrongful act of the defendant. *Michigan Cent. R. Co. v. Vreeland*, (1913) 227 U. S. 59, 33 S. Ct. 192, 57 U. S. (L. ed.) 417, Ann. Cas. 1914C 176; *Chesapeake, etc., R. Co. v. Carnahan*, (1916) 241 U. S. 241, 36 S. Ct. 594, 60 U. S. (L. ed.) 979.

So an instruction to the jury that if they found for the plaintiff, they would find such "an amount of damages as will fully compensate him for all suffering of mind and body inflicted upon him by his injury and for the personal inconvenience and the loss of time and expense of care that naturally and proximately resulted from the injury," and which applied the same rule in case they should find that the plaintiff's injuries are permanent, is not erroneous. *Arizona Eastern R. Co. v. Bryan*, (1916) 18 Ariz. 106, 157 Pac. 376.

Suffering in mind and body.—"No direct evidence of pain of mind was offered, but mental anguish is presumed to follow physical pain and injury such as plaintiff sustained." *Panhandle, etc., R. Co. v. Brooks*, (Tex. App. Civ. 1917) 199 S. W. 665, affirming judgment for plaintiff.

Damages for pain and suffering are recoverable by the employee. *Atlantic Coast Line R. Co. v. Tomlinson*, (Ga. App. 1918) 94 S. E. 909.

Decreased ability to earn money.—It has been held proper to instruct the jury that they may include in their award of damages "proper compensation for his being unable because of his injury to follow such a calling or business as he could otherwise have followed." *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244.

In an action by an employee against a railroad company for damages on account of permanent injuries, where there is evidence to authorize a finding that the plaintiff sustained permanent injuries and by reason thereof his earning capacity was impaired, it is proper for the jury, in passing upon the amount of his damages, to estimate his loss by reason of decreased earning capacity reduced to its present cash value. While instructing the jury as to the amount of damages to be allowed on account of decreased earning capacity, it is inaccurate to charge that "the value of the earning capacity of plaintiff would have to be reduced to its present cash value." *Louisville, etc., R. Co. v. Paschal*, (1916) 145 Ga. 521, 89 S. E. 620.

Time when allowance for impaired earning power begins.—In instructing the jury the court should explain that an allowance, if any, for permanent impairment of power to earn money should begin when allowance, if any, for time lost ended. *Louisville, etc., R. Co. v. Patrick*, (1915) 167 Ky. 118, 180 S. W. 55; *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653.

But if the instruction fails to limit the plaintiff's recovery to the impairment of the plaintiff's power to earn money in the future, and the defendant should desire a more specific instruction to that effect, he should ask the court to make it so, and upon his failure to call the court's attention to the immaterial error he will not be permitted to complain upon appeal. *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653.

Instruction as to future effects of injury.—"The principle is established that when the evidence in a case shows that there will be future effects from an injury an instruction which justifies an inclusion of them in an award of damages is not error." *Chesapeake, etc., R. Co. v. Carnahan*, (1916) 241 U. S. 241, 36 S. Ct. 594, 60 U. S. (L. ed.) 979.

Effect of payment by defendant of medical expenses.—The fact that defendant provided "medical and hospital services and medicines" for the plaintiff subsequent to his injury has been held not to estop him from suing under this Act, since if plaintiff had paid such expenses defendant's liability as found by the verdict would include such payments, and theoretically recovery has been lessened to that extent. *Waters v. Guile*, (C. C. A. 6th Cir. 1916) 234 Fed. 532, 148 C. C. A. 298.

Damages in actions for death in general—Measure of damages generally.—Under the federal Employers' Liability Act, as interpreted by the Supreme Court of the United States, a new and distinct right of action is given for the benefit of the dependent relatives named in the statute, and the damages recoverable are limited to such loss as results because they have been deprived of a reasonable expectation of pecuniary benefits by the wrongful death of the injured employee. The damage is limited strictly to the financial loss sustained. If there is no reasonable expectation of pecuniary benefits, or no financial loss sustained, then there can be no recovery under this Act. *Chesapeake, etc., R. Co. v. Gainey*, (1916) 241 U. S. 494, 33 S. Ct. 633, 60 U. S. (L. ed.) 1124; *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1117; *Philadelphia, etc., R. Co. v. Harland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51; *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

Where the deceased endured no conscious suffering, possible recovery is limited to pecuniary loss sustained by the designated beneficiary. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, *reversing* (Miss. 1916) 71 So. 913.

In an action for the widow an instruction, in substance, that the damages should be equivalent to compensation for the deprivation of the reasonable expectation

of pecuniary benefits that would have resulted from the continued life of the deceased, was correct. *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525, 39 S. Ct. 370, 62 U. S. (L. ed.) 867, *affirming* (1916) 168 Ky. 262, 181 S. W. 1126.

Excessiveness of verdict generally.—In an action under the federal Employers' Liability Act to recover for dependent parents the pecuniary loss sustained by wrongful death of a son, the instructions being correct, a verdict will not be held excessive simply because it is not the result of a calculation based upon the earning capacity of deceased at the time of his death, when it is warranted upon consideration of the reasonable expectation of benefits from the continuance of his life as it appears from all of the evidence. *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

The court may require a remittitur from a verdict if it thinks the verdict excessive. *Union Pac. R. Co. v. Hadley*, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, *affirming* (1916) 99 Neb. 349, 156 N. W. 765.

Duty to lessen damages.—"Ordinarily a person seeking to recover damages for the wrongful act of another must do that which a reasonable man would do under the circumstances to limit the amount of the damages." *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1117. She also *Chesapeake, etc., R. Co. v. Gainey*, (1916) 241 U. S. 494, 36 S. Ct. 633, 60 U. S. (L. ed.) 1124.

Pecuniary loss.—There must be evidence of pecuniary damage before damages can be allowed. *Nashville, etc., Ry. v. Anderson*, (1915) 134 Tenn. 666, 185 S. W. 677.

In this connection the following instruction has been held correct: "If you find in favor of the plaintiff, then in estimating damages you cannot presume that the next of kin have suffered pecuniary loss because of the death of Griffith, but the pecuniary loss, if any has been sustained, must be proven. If you find for the plaintiff, you must allow the plaintiff in your verdict for the use and benefit of herself, as wife, and her minor children, if you find that she has such children, such sum as in your judgment under the proof will be just compensation for the pecuniary loss they have sustained by reason of the death of said deceased. In estimating such sum, you should consider the age of the deceased, together with his capacity for earning money, his disposition to contribute, to care for, and to furnish his wife money as shown by the evidence, the ages of the children, and the probable expectation of the life of the parties concerned. . . ." *Griffith v. Midland Valley R. Co.*, (1917) 100 Kan. 500, 166 Pac. 467.

The approved measure of recovery is the present cash value of the future benefits of which the beneficiaries were deprived by the death, making adequate allowance according to the circumstances, for the earning power of money. *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1117; *Chesapeake, etc., R. Co. v. Gainey*, (1916) 241 U. S. 494, 36 S. Ct. 633, 60 U. S. (L. ed.) 1124.

"So far as a verdict is based upon the deprivation of future benefits, it will afford more than compensation if it be made up by aggregating the benefits without taking account of the earning power of the money that is presently to be awarded. It is self-evident that a given sum of money in hand is worth more than the like sum of money payable in the future." *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1117.

The pecuniary loss cannot be more than the loss which they have sustained by reason of the deprivation of the pecuniary benefits which they might reasonably have received from the deceased if he had lived. *Chafin v. Norfolk, etc., R. Co.*, (W. D. Va. 1917) 93 S. E. 822.

It has been held that the pecuniary loss recoverable under the federal Employers' Liability Act by one dependent upon the employee wrongfully killed, must be a loss which can be measured by some standard, and does not include an inestimable loss such as that of society and companionship of the deceased. *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51; *Cain v. Southern R. Co.*, (E. D. Tenn. 1911) 199 Fed. 211.

Funeral expenses.—This Act makes no provision for the recovery by next of kin of funeral expenses and an allowance therefor is error. *Delaware, etc., R. Co. v. Hughes*, (C. C. A. 2d Cir. 1917) 240 Fed. 941, 153 C. C. A. 627; *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51.

Medical expenses.—Whether defendant was entitled to have the payment of hospital and medical bills taken into account in the assessment of damages is unimportant, where no request to that effect was made, and presumably the recovery was less than it would have been but for such payment. *Grand Trunk R. Co. v. Knapp*, (C. C. A. 6th Cir. 1916) 233 Fed. 950, 147 C. C. A. 624.

In another case, however, it is held that a recovery will not be allowed to a father, in addition to a son's recovery, on account of expenses incurred for medical attention to his son and loss of the latter's services. *New York Cent., etc., R. Co. v. Tonsellito*, (1917) 244 U. S. 360, 37 S. Ct. 620, 61 U. S. (L. ed.) 1194.

Addition of per centum damages.—Ten per cent. damages may be added by a state court of last resort in affirming a judg-

ment for the plaintiff where the defendant obtained a supersedeas, and the local law makes 10 per cent. the cost of it to all persons if the judgment is affirmed. *Louisville, etc., R. Co. v. Stewart*, (1916) 241 U. S. 261, 36 S. Ct. 586, 60 U. S. (L. ed.) 989.

Damages in recovery by widow and children—*Measure of damages generally.*—The measure of damages in an action to recover for the death of a husband or father is such as will reasonably compensate for "loss of pecuniary benefits" and must be based on financial loss. *Newkirk v. Pryor*, (Mo. App. 1916) 183 S. W. 682.

An instruction telling the jury that the measure of recovery is such an amount in damages as would fairly and reasonably compensate the widow, who was the sole beneficiary, for the loss of pecuniary benefits she might reasonably have received if the deceased had not been killed, is correct. *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126.

The damages sustained by the widow and children are the benefit which might be reasonably expected from the husband and father in a pecuniary way had he lived. *Davis v. Cincinnati, etc., R. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061.

Mode of determining damages.—The pecuniary loss of a widow and minor child is not what the deceased might have earned, but what part of his earnings they might reasonably have expected to receive. *Nashville, etc., R. Co. v. Anderson*, (1916) 134 Tenn. 666, 185 S. W. 677, Ann. Cas. 1917D 902.

"Excepting as enlarged by statute, the pecuniary loss of a widow and children resulting from death can be no more than from the nature of their relation to the deceased they can sustain. The widow and children cannot sustain loss for funeral expenses of the husband and father because they are in no sense liable for them. Liability for funeral expenses rests upon his estate, for loss to which a right of action is otherwise afforded. As the widow and children cannot sustain such a loss, damages for such a loss cannot be included in damages awarded exclusively for their benefit." *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51.

The damages awarded in favor of a widow and minor child should include such sum as the widow might reasonably expect to receive from her husband for support, and such a sum as the child might reasonably expect to receive from his father for support during minority. *Nashville, etc., R. Co. v. Anderson*, (1916) 134 Tenn. 666, 185 S. W. 677, Ann. Cas. 1917D 902.

It has been held that a plaintiff is not entitled to recover a greater sum than will produce annually, for the wife during the 38 years' life expectancy of her husband,

and also for the child during a period of 21 years, the time it could reasonably expect pecuniary benefits from its father, what both would reasonably expect from the deceased had he lived, the principal sum so provided for the two beneficiaries to be exhausted by such annual payments at the expiration of the deceased's life expectancy. In other words, such a sum as will purchase annuities equal to what they reasonably expected to receive from deceased for the periods of 38 and 21 years, respectively. *Chafin v. Norfolk, etc., R. Co.*, (W. Va. 1917) 93 S. E. 822.

Presumption as to pecuniary loss.—"When the relation between deceased and the beneficial plaintiff is that of husband and wife or parent and minor child, in the absence of evidence to the contrary, actual pecuniary loss will be presumed from the death." *Gilliam v. Southern R. Co.*, (1917) 108 S. C. 195, 93 S. E. 865.

Effect of abandonment of wife.—Although a man may have abandoned his wife and child and failed to support them, which act is by statute a misdemeanor, they still have a legal pecuniary interest in the continuance of his life. The fact that he had abandoned them and had failed to perform the duty imposed upon him by the law does not absolve him from the obligation, nor deprive them of the right to have it enforced. *Gilliam v. Southern R. Co.*, (S. C. 1917) 93 S. E. 865.

Where it appears from the undisputed evidence that deceased had not supported his wife and child, recovery, if at all, should be limited to the prospective loss which the widow and daughter have actually sustained by reason of the deprivation of their right of support. *Gilliam v. Southern R. Co.*, (S. C. 1917) 93 S. E. 865.

Effect of wife's forfeiture of right to support.—In view of evidence tending to show that the wife had forfeited her right of support, it was held that the court should have given defendant's request, to wit: "I charge you the measure of damages is the amount which will compensate the surviving beneficiaries for the actual pecuniary loss, and the jury should apportion the amount among them according to the loss of each." *Gilliam v. Southern R. Co.*, (S. C. 1917) 93 S. E. 865.

Effect of divorce judgment ordering payments to support child.—In an action for the benefit of the wife and child of an employee who has been killed in the service of a carrier it has been held to be error to admit evidence of a judgment of divorce in which the deceased was ordered to pay a certain sum to the wife in support of the child. In this connection it was said: "There is nothing said in the judgment indicating that this is the only

sum which he will ever be called upon to pay in support of his child, and it is a well-known rule of law in this state that such judgments may be opened up at any time, by appropriate proceedings, and additional allowances made, if the proof on such proceedings justifies it. Moreover, the child was not a party to that proceeding, and the judgment ordering the allowance is by no means binding on it." *Davis v. Cincinnati, etc., R. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061.

Right of child to support not question for jury.—A minor child has the right to expect such pecuniary assistance from the father, during the period of minority, as the father is financially able to furnish. It is therefore improper to submit to the jury the question whether the infant child has a right to expect financial assistance from the continued life of the father. *Davis v. Cincinnati, etc., R. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061.

Apportionment of damages.—"The federal statute makes no provision for the apportionment of the fund, and therefore the state statute controls. The source of the recovery is the United States statute, and that indicates only the different classes of the beneficiaries, and the manner of ascertaining the amount due. But when the amount and class are ascertained, the sum paid or recovered must be distributed in that class according to the requirement of the state law. In this case there being a widow and a child, the amount is to be divided between them according to our statute, two-thirds to the child and one-third to the widow. That matter is regulated by the state statute of distribution." *In re Stone*, (1917) 173 N. C. 208, 91 S. E. 852.

It is not error to direct the jury to apportion the damages in an action for death of an employee where award is not excessive as to any of the several dependents or as a whole. *Illinois Cent. R. Co. v. Skinner*, (1917) 177 Ky. 62, 197 S. W. 552.

A verdict in solido in favor of the personal representatives is not objectionable because it does not apportion the amount of the recovery between the wife and child of the deceased. *St. Louis, etc., R. Co. v. Clappitt*, (Okla. 1916) 154 Pac. 40.

Where, in an action brought by an injured employee for damages under the federal Employers' Liability Act, the employee dies and the action is revived in the name of his administrator for the benefit of his widow and child, a general verdict for the benefit of the widow and minor child may be returned by the jury without apportioning the damages between the beneficiaries. *Cincinnati, etc., R. Co. v. Claybourne*, (1916) 169 Ky. 315, 183 S. W. 903.

Where instructions to the jury were such that they must have inferred that

a verdict in an action for death must be in a lump sum and no suggestion was made that the amount of the verdict should be apportioned the widow and children it has been held that the question of the informality of the verdict cannot be raised for the first time on appeal. *Doichinoff v. Chicago, etc., R. Co.*, (1916) 51 Mont. 582, 154 Pac. 924.

The defendant cannot object to a verdict on the ground that there was an error in the apportionment of the damages. *Anest v. Columbia, etc., R. Co.*, (1916) 89 Wash. 609, 154 Pac. 1100.

"It is well settled that the amount allotted to each party entitled is of no concern to the defendant unless such allotment increased the amount of the total recovery." *In re Stone*, (1917) 173 N. C. 208, 91 S. E. 852.

Where, in an action for damages for death brought under the federal Employers' Liability Act, the verdict is excessive because of the excessive apportionment to one of the beneficiaries, the entire judgment will be reversed and the cause remanded for a new trial, even though the damages apportioned to another beneficiary are not excessive. *Pittsburgh, etc., R. Co. v. Collard*, (1916) 170 Ky. 239, 185 S. W. 1108.

Jury of less than twelve.—The Seventh Amendment to the United States Constitution securing the right of trial by jury deals only with federal, and is not concerned with state, action. It applies only to proceedings in the courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts or the standards which must be applied concerning the same. The court said: "The proposition that, as the Seventh Amendment is controlling upon Congress, its provisions must therefore be applicable to every right of a federal character created by Congress and regulate the enforcement of such right, but in substance creates a confusion by which the true significance of the Amendment is obscured. That is, it shuts out of view the fact that the limitations of the Amendment are applicable only to the mode in which power or jurisdiction shall be exercised in tribunals of the United States, and therefore that its terms have no relation whatever to the enforcement of rights in other forums merely because the right enforced is one conferred by the laws of the United States. And of course it is apparent that to apply the constitutional provision to a condition to which it is not applicable would be not to interpret and enforce the Constitution, but to distort and destroy it." This principle applies in actions under this Act. *Minneapolis, etc., R. Co. v. Bombolis*, (1916) 241 U. S. 211, 36 S. Ct. 595, 60 U. S. (L. ed.) 961, Ann. Cas. 1916E 505, L. R. A. 1917A 86. See also *St. Louis, etc., R. Co. v. Brown*,

(1916) 241 U. S. 223, 36 S. Ct. 602, 60 U. S. (L. ed.) 966; *Chesapeake, etc., R. Co. v. Carnahan*, (1916) 241 U. S. 241, 36 S. Ct. 594, 60 U. S. (L. ed.) 979; *Louisville, etc., R. Co. v. Stewart*, (1916) 241 U. S. 261, 36 S. Ct. 586, 60 U. S. (L. ed.) 989; *Chesapeake, etc., R. Co. v. Kelly*, (1916) 241 U. S. 485, 36 S. Ct. 630, 60 U. S. (L. ed.) 1117; *Chesapeake, etc., R. Co. v. Gainey*, (1916) 241 U. S. 494, 36 S. Ct. 633, 60 U. S. (L. ed.) 1124; *Cramer v. Chicago, etc., R. Co.*, (1916) 134 Minn. 61, 158 N. W. 796; *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411; *Donaldson v. Great Northern R. Co.*, (1916) 89 Wash. 161, 154 Pac. 133.

Where in an action in a state court under this Act the Constitution and laws of the state provide that in civil causes, after a case has been under submission to a jury for a period of twelve hours without a unanimous verdict, five-sixths of the jury are authorized to reach a verdict which is entitled to the legal effect of a unanimous verdict at common law, a verdict in conformity to such provisions is proper. *Minneapolis, etc., R. Co. v. Bombolis*, (1916) 241 U. S. 211, 36 S. Ct. 595, 60 U. S. (L. ed.) 961; Ann. Cas. 1916E 505, L. R. A. 1917A 86; *Bombolis v. Minneapolis, etc., R. Co.*, (1914) 128 Minn. 112, 150 N. W. 385.

In an action in a state court based on the federal Employers' Liability Act a state statute permitting a valid verdict to be rendered by three-fourths of the jury is applicable. *Chesapeake, etc., R. Co. v. Kelly*, (1914) 161 Ky. 655, 171 S. W. 185. See also *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840; *Cincinnati, etc., R. Co. v. Clarke*, (1916) 169 Ky. 662, 185 S. W. 94; *Cincinnati, etc., R. Co. v. Claybourne*, (1916) 169 Ky. 315, 183 S. W. 903; *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126; *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653; *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411.

Questions for court and jury—*In general*.—Where the question is one upon which reasonable men might honestly draw different conclusions, it should be submitted to the jury. *Carolina, etc., Ry. Co. v. Stroup*, (C. C. A. 6th Cir. 1917) 239 Fed. 75, 152 C. C. A. 125.

It is only when the facts are such that reasonable men must draw the same conclusion from them that the question of negligence is considered one of law for the court. *Chicago, etc., R. Co. v. Felder*, (Okla. 1916) 155 Pac. 529.

Defect in appliances.—Where considering conflicting testimony in the aspect least favorable to the company, it results that there is evidence tending to show that, while the engineer did not see the man struck while walking on the track, he was notified almost instantly by a call

to stop from the one witness who says he saw him struck, and that if the power brake had been working the engineer could have stopped his engine, running three or four miles an hour, "almost instantly,"—"in eight to ten feet," but that in fact it ran for approximately one hundred and thirty-five feet after striking the deceased, with his body under the tender or engine almost the entire time, it was decided that there was sufficient evidence to justify the submission to the jury of the question whether the power brake on the engine was in working order at the time of the accident, and if it was not, did this defect contribute "in whole or in part" to cause the fatal result. *Union Pac. R. Co. v. Huxoll*, (1918) 245 U. S. 535, 38 S. Ct. 187, 62 U. S. (L. ed.) 455.

Appliance reasonably safe.—In the application of the rule that the employer is under a duty to exercise ordinary care to supply machinery and appliances reasonably safe and suitable for the use of the employee, but is not required to furnish the latest, best, and safest appliances, or to discard standard appliances upon the discovery of later improvements, provided those in use are reasonably safe and suitable, it has been held to be proper to submit to the jury the question of whether an appliance was reasonably safe and suitable. *Chicago, etc., R. Co. v. Bower*, (1916) 241 U. S. 470, 36 S. Ct. 624, 60 U. S. (L. ed.) 1107.

Negligence of carrier.—The question of negligence on the part of the carrier is one for the jury to determine. *Marland v. Philadelphia, etc., R. Co.*, (C. C. A. 3d Cir. 1917) 246 Fed. 91, 158 C. C. A. 319. *Pennsylvania R. Co. v. Glas*, (C. C. A. 3d Cir. 1917) 239 Fed. 256, 152 C. C. A. 244 (whether or not reasonable inspection would have discovered defect in arch bar); *Carolina, etc., R. Co. v. Stroup*, (C. C. A. 6th Cir. 1917) 239 Fed. 75, 152 C. C. A. 125 (failure of engineer to apply air brakes); *Overstreet v. Norfolk, etc., R. Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 565, 151 C. C. A. 501 (coupler or some part of it out of order); *Hughes v. Delaware, etc., R. Co.*, (N. D. N. Y. 1916) 233 Fed. 118 (backing cars); *Alabama Great Southern R. Co. v. Skotzy*, (1916) 196 Ala. 25, 71 So. 335 (switching without warning, cars which ran over fireman on track next to his engine); *St. Louis, etc., R. Co. v. Howard*, (1916) 124 Ark. 588, 188 S. W. 14 (manner of fastening apron between engine and tender); *St. Louis, etc., R. Co. v. Ingram*, (1916) 124 Ark. 298, 187 S. W. 452 (use of defective skid); *Smithson v. Atchison, etc., R. Co.*, (1916) 174 Cal. 148, 162 Pac. 111 (failure to adequately light turntable in conjunction with piling sacks of sand on it); *Kenyon v. Illinois Cent. R. Co.*, (1916) 173 Ia. 484, 155 N. W. 810 (lack of care as to providing and maintaining reason-

ably safe equipment for watering engines); *Thomas v. Atchison, etc., R. Co.*, (1917) 101 Kan. 528, 168 Pac. 322 (train coasting without giving warning signal); *Illinois Cent. R. Co. v. Skinner*, (1917) 177 Ky. 62, 197 S. W. 552 (presence of jack box in space between tracks); *Davis v. Cincinnati, etc., R. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061 (condition of track at curve and whether rate of speed was such as contributed to the injury); *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653 (unballasted space below switch rod between ties); *Norton v. Maine Cent. R. Co.*, (1917) 116 Me. 147, 100 Atl. 598 (whether master reasonably bound to anticipate plaintiff's presence on top of car at a dangerous place); *Maijala v. Great Northern R. Co.*, (1916) 133 Minn. 301, 158 N. W. 430 (transferring decedent, under the age of fifteen, from comparatively safe work to more dangerous employment); *Brooks v. Yazoo, etc., R. Co.*, (1916) 111 Miss. 793, 72 So. 227 (cross tie not fastened); *Winslow v. Missouri, etc., R. Co.*, (Mo. App. 1916) 192 S. W. 121 (hole in railroad siding); *Blankenbaker v. St. Louis, etc., R. Co.*, (Mo. 1916) 187 S. W. 840 (whether crack in flange of wheel old or new); *Topore v. Boston, etc., R. Co.*, (N. H. 1916) 100 Atl. 153 (order to men to jump from moving engine); *Armbricht v. Delaware, etc., R. Co.*, (1917) 90 N. J. L. 529, 101 Atl. 203 (failure to give warning to men on track that train behind time and was expected); *Willever v. Delaware, etc., R. Co.*, (1916) 89 N. J. L. 697, 99 Atl. 321 (train crew running down employee on track); *Marus v. Central R. Co.*, (1916) 175 App. Div. 783, 161 N. Y. S. 546 (defective equipment in that warning telltale was too close to bridge); *McAuliffe v. New York Cent., etc., R. Co.*, (1916) 172 App. Div. 597, 158 N. Y. S. 922 (reasonable warning by those in charge of approaching train to employee crossing tracks); *St. Louis, etc., R. Co. v. Clappitt*, (Okla. 1916) 154 Pac. 40 (defective station platform); *Haas v. Erie R. Co.*, (1916) 254 Pa. St. 235, 98 Atl. 867 (escaping steam from locomotive); *Ballenger v. Southern R. Co.*, (1916) 106 S. C. 200, 90 S. E. 1019 (handle on switch broken); *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528 (defective hammer and nails causing injury to eye); *Robie v. Boston, etc., R. Co.*, (Vt. 1917) 100 Atl. 925 (leaving loose bolts on floor of hand car instead of in box or kegs); *Aldread v. Northern Pac. R. Co.*, (1916) 93 Wash. 209, 160 Pac. 429 (whether due and reasonable care required coupling of air brakes in switching cars).

Submitting case to jury.—The trial court was justified in submitting to the jury the general question of defendant's negligence if the defendant's conduct, viewed as a whole, warranted a finding of

neglect, despite defendant's attempt to split up the charge of negligence into items mentioned in the declaration as constituent elements and to secure a ruling as to each. *Union Pac. R. Co. v. Hadley*, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, *affirming* (1916) 99 Neb. 349, 156 N. W. 765.

Directing verdict or nonsuit.—Where, after the close of the testimony in an action based on both the Employers' Liability Act and the Safety Appliance Acts, the claim under the Safety Appliance Acts was withdrawn and it was insisted on appeal that the abandonment of the claim as to a violation of the Safety Appliance Acts necessarily withdrew all evidence tending to show that the couplers were defective and in the absence of such evidence the proof established as a matter of law that the plaintiff assumed the risk and the court should have directed a verdict in favor of the railroad, the United States Supreme Court declared the contention was without merit. *St. Louis, etc., R. v. Brown*, (1916) 241 U. S. 223, 36 S. Ct. 602, 60 U. S. (L. ed.) 966.

Where there is no substantive proof that the carrier was guilty of any act of negligence, a nonsuit is proper. *Williams v. Western, etc., & A. R. Co.*, (1917) 20 Ga. App. 726, 93 S. E. 555; *Landrum v. Western, etc., R. Co.*, (1917) 146 Ga. 88, 90 S. E. 710.

A nonsuit is properly directed where the evidence is insufficient to carry the question of the negligence of the railroad to the jury. *Reese v. Philadelphia, etc., R. Co.*, (1915) 239 U. S. 463, 36 S. Ct. 134, 60 U. S. (L. ed.) 384, *affirming* (C. C. A. 3d Cir. 1915) 225 Fed. 518, 140 C. C. A. 660.

Form of verdict.—It has been held no error for the court to refuse to grant a defendant's request that the court direct the jury to set out in its verdict all the facts which it regarded as proved upon five interrogatories propounded in the request. *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244.

1909 Supp., p. 585, sec. 3.

Construction of section, in general.—Negligence under this Act must necessarily be contributory and therefore no defense, or the sole cause of the injury and therefore a defense in toto. *Fletcher v. South Dakota Cent. R. Co.*, (1915) 36 S. D. 401, 155 N. W. 3.

"There is a well-recognized distinction between assumed risk and contributory negligence. Contributory negligence implies fault or breach of duty on the part of the injured party, either by doing or by failing to do something that a reasonably prudent man would not have done, or would not have failed to do, to avoid being injured under the same or similar circumstances. On the other hand,

there is a certain amount of danger incident to many employments, which ordinary prudence cannot always avoid. Where these are known to the employee, they are assumed by him as an implied part of his contract of employment. An employee assumes the risk of those dangers known to him to be ordinarily incident to the labor which he has agreed to perform, or which are so obvious that a man of ordinary intelligence and prudence must necessarily be presumed to have learned of them in the ordinary course of his employment." *Gulf, etc., R. Co. v. Cooper*, (Tex. Civ. App. 1917) 191 S. W. 579.

Conformity to state procedure, in general.—A defendant carrier has the federal right to a fair opportunity to show in diminution of damages any negligence attributable to the employee. *Kansas City Southern R. Co. v. Jones*, (1916) 241 U. S. 181, 36 S. Ct. 513, 60 U. S. (L. ed.) 943.

The diminution of damages in case of plaintiff's contributory negligence should be in proportion to the amount of negligence attributable to him; and this can only mean that where the causal negligence is partly attributable to him and partly attributable to the carrier, the statute applies, and does not apply to a case in which the injury is due solely to the negligence of the plaintiff. *Southern R. Co. v. Peters*, (1915) 194 Ala. 94, 69 So. 611.

Negligence of employee as sole proximate cause of injury.—If the negligence of the employee was the sole proximate cause of the injury there can be no recovery. *Virginian R. Co. v. Linkous*, (C. C. A. 4th Cir. 1915) 230 Fed. 88, 144 C. C. A. 386, (C. C. A. 4th Cir. 1916) 235 Fed. 49, 148 C. C. A. 543; *St. Louis, etc., R. Co. v. Steward*, (1916) 124 Ark. 437, 187 S. W. 920; *Swasey v. Maine Cent. R. Co.*, (1916) 115 Me. 215, 98 Atl. 706; *Gillis v. New York, etc., R. Co.*, (1916) 224 Mass. 541, 113 N. E. 212; *Virginian R. Co. v. Andrews*, (1916) 118 Va. 482, 87 S. E. 577; *Hull v. Virginian R. Co.*, (1916) 78 W. Va. 25, 88 S. E. 1060.

There is no justification for a comparison of negligences or the apportioning of their effect where there was nothing to confuse the employee's judgment or to cause hesitation or to in any way extenuate his negligence, and his duty was as clear as its performance was easy. *Great Northern R. Co. v. Wiles*, (1916) 240 U. S. 444, 36 S. Ct. 406, 60 U. S. (L. ed.) 732.

Where a brakeman, who was sent to flag an approaching train, went to sleep within a short distance of a curve with his head on a cross tie near the track it was held, there being no evidence to explain his conduct, that the engineer of the approaching train was not guilty of negligence in not stopping his train in

time to avoid striking him, it appearing that the distance from the curve to the place where the deceased was struck was not sufficient to have permitted him to have done so. *Southern R. Co. v. Gray*, (1916) 241 U. S. 333, 36 S. Ct. 558, 60 U. S. (L. ed.) 1030.

On the other hand the negligence of the employee must have been the sole cause of the injury in order to defeat a recovery. *Southern R. Co. v. Mays*, (C. C. A. 4th Cir. 1916) 239 Fed. 41, 152 C. C. A. 91; *Delano v. Roberts*, (Mo. App. 1916) 182 S. W. 771.

Effect of disregard of rules.—Where there has been a habitual disregard of a rule amounting to an abrogation thereof this will be sufficient to relieve an employee of the charge of contributory negligence. *St. Louis, etc., R. Co. v. Steward*, (1916) 124 Ark. 437, 187 S. W. 920.

Allegations of contributory negligence as a defense necessarily assume negligence on the part of defendant, and as a defense under the statute is a partial, not a complete defense. *Arizona Eastern R. Co. v. Bryan*, (1916) 18 Ariz. 106, 157 Pac. 376.

Effect of contributory negligence on damages—In general.—It may be stated generally that under this section the contributory negligence of an employee is not a bar to an action for an injury received by him, but only operates to diminish the amount of the damages recoverable. *Illinois Cent. R. Co. v. Skaggs*, (1916) 240 U. S. 66, 36 S. Ct. 249, 60 U. S. (L. ed.) 528; *St. Louis, etc., R. Co. v. Brown*, (1916) 241 U. S. 223, 36 S. Ct. 602, 60 U. S. (L. ed.) 966; *Cincinnati, etc., R. Co. v. Hall*, (C. C. A. 6th Cir. 1917) 243 Fed. 76, 155 C. C. A. 606; *Southern R. Co. v. Mays*, (C. C. A. 4th Cir. 1916) 239 Fed. 41, 152 C. C. A. 91; *Louisville, etc., R. Co. v. Blankenship*, (Ala. 1917) 74 So. 960; *Southern R. Co. v. Fisher*, (Ala. 1917) 74 So. 580; *Western R. v. Mays*, (1916) 197 Ala. 367, 72 So. 641; *Arizona Eastern R. Co. v. Bryan*, (1916) 18 Ariz. 106, 157 Pac. 376; *Hubert v. New York, etc., R. Co.*, (1916) 90 Conn. 261, 96 Atl. 967; *Louisville, etc., R. Co. v. Paschal*, (1916) 145 Ga. 521, 89 S. E. 620; *Warren v. Jackson*, (1917) 204 Ill. App. 576; *Godby v. Wilson*, (1916) 203 Ill. App. 612; *Roberts v. Cleveland, etc., R. Co.*, (1916) 202 Ill. App. 480; *Kenyon v. Illinois Cent. R. Co.*, (1916) 173 Ia. 484, 155 N. W. 810; *Thomas v. Atchison, etc., R. Co.*, (1917) 101 Kan. 528, 168 Pac. 322; *Illinois Cent. R. Co. v. Skinner*, (1917) 177 Ky. 62, 197 S. W. 552; *Lexington, etc., R. Co. v. Smith*, (1916) 172 Ky. 117, 188 S. W. 1091; *Norfolk, etc., R. Co. v. Short*, (1916) 171 Ky. 647, 188 S. W. 786; *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126; *Baltimore, etc., R. Co. v. Branson*, (1916) 128 Md. 678, 98 Atl. 225; *Gaines v. Grand Trunk R. Co.*, (1916) 193 Mich.

398, 159 N. W. 542; *Chapman v. U. S. Exp. Co.*, (1916) 192 Mich. 654, 159 N. W. 308; *Kippenbrock v. Wabash R. Co.*, (1917) 270 Mo. 479, 194 S. W. 50; *Yoakin v. Lusk*, (Mo. App. 1917) 193 S. W. 635; *Winslow v. Missouri, etc., R. Co.*, (Mo. App. 1916) 192 S. W. 121; *Christy v. Wabash R. Co.*, (1916) 195 Mo. App. 232, 191 S. W. 241; *Blackenbaker v. St. Louis, etc., R. Co.*, (Mo. 1916) 187 S. W. 840; *Brightwell v. Lusk*, (1916) 194 Mo. App. 643, 189 S. W. 413; *Koukouris v. Union Pac. R. Co.*, (1916) 193 Mo. App. 495, 186 S. W. 545; *McAuliffe v. New York Cent., etc., R. Co.*, (1916) 172 App. Div. 597, 158 N. Y. S. 922; *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961; *Robie v. Boston, etc., R. Co.*, (Vt. 1917) 100 Atl. 925; *Anest v. Columbia, etc., R. Co.*, (1916) 89 Wash. 609, 154 Pac. 1100.

Duty to diminish damages.—If the employee was guilty of contributory negligence the recovery must be diminished and the jury should be so instructed. *Lincoln v. Pryor*, (1916) 199 Ill. App. 228; *Collins v. Michigan Cent. R. Co.*, (1916) 193 Mich. 303, 159 N. W. 535; *Dowell v. Wabash R. Co.*, (Mo. App. 1916) 190 S. W. 939.

Remittitur of damages where no deduction for contributory negligence.—Where the jury have assessed the damages at a sum which must be deemed to be full compensation without deduction for the contributory negligence of the employee, as a condition to denying a motion for a new trial it has been held that the court may order a remission of a portion of the damages. *Sain v. Southern R. Co.*, (E. D. Tenn. 1917) 199 Fed. 211 (reduction of verdict from \$10,000 to \$7,500); *Hadley v. Union Pac. R. Co.*, (1916) 99 Neb. 349, 156 N. W. 765.

"Whenever a court is convinced of an abuse of power on the part of the jury in dividing the blame where both sides had been guilty of negligence contributing to the accident, it should not hesitate to order a remittitur or grant a new trial." *Waina v. Pennsylvania Co.*, (1915) 251 Pa. St. 213, 96 Atl. 461.

The jury should make a deduction for contributory negligence of the employee, and where it does not appear that this has been done it has been held that the verdict will be set aside (*Pyles v. Atchison, etc., R. Co.*, (1916) 97 Kan. 455, 155 Pac. 788) unless the plaintiff accepts a reduction (*Saar v. Atchison, etc., R. Co.*, (1916) 97 Kan. 441, 155 Pac. 954), in which case the judgment may be affirmed. *Anest v. Columbia, etc., R. Co.*, (1916) 89 Wash. 609, 154 Pac. 1100.

Effect of violation of Safety Appliance Acts—Construction generally.—The provision of the federal Employers' Liability Act that an employee of a common carrier who may be injured or killed shall not be held guilty of contributory negligence,

where the violation by the carrier of any statute enacted for the safety of employees contributed to the injury or death, applies only to violations of certain federal statutes, such as the Safety Appliance Acts, and not to violation of state laws. *Gee v. Lehigh Valley R. Co.*, (1914) 163 App. Div. 274, 148 N. Y. S. 882; *Smithson v. Atchison, etc., R. Co.*, (1916) 174 Cal. 148, 162 Pac. 111.

A carrier is liable in damages where a violation of the Safety Appliance Acts is shown. *Union Pac. R. Co. v. Huxoll*, (1917) 245 U. S. 535, 38 S. Ct. 187, 62 U. S. (L. ed.) 455; *Atlantic City R. Co. v. Parker*, (1916) 242 U. S. 56, 37 S. Ct. 69, 61 U. S. (L. ed.) 150; *St. Louis Merchants' Bridge Terminal R. Co. v. Schuerman*, (C. C. A. 8th Cir. 1916) 237 Fed. 1, 150 C. C. A. 203; *Louisville, etc., R. Co. v. Layton*, (1916) 145 Ga. 886, 90 S. E. 53; *Davidson v. Peoria, etc., R. Co.*, (1916) 203 Ill. App. 498; *Wagner v. Chicago, etc., R. Co.*, (1916) 200 Ill. App. 305; *Clapper v. Dickinson*, (1917) 137 Minn. 415, 163 N. W. 752; *Cramer v. Chicago, etc., R. Co.*, (1916) 134 Minn. 61, 158 N. W. 796; *McNaney v. Chicago, etc., R. Co.*, (1916) 132 Minn. 391; 157 N. W. 650; *Moore v. St. Joseph, etc., R. Co.*, (1916) 268 Mo. 31, 186 S. W. 1035; *Armitage v. Chicago, etc., R. Co.*, (Mont. 1917) 166 Pac. 301; *Calhoun v. Great Northern R. Co.*, (1916) 162 Wis. 264, 156 N. W. 198. It being declared that a violation of the Safety Appliance Acts is negligence per se, in such a case contributory negligence is excluded from consideration. *Lemee v. Texas, etc., R. Co.*, (1917) 141 La. 769, 75 So. 676.

The question of contributory negligence is eliminated where a violation of the Hours of Service Act, 1909 Supp., p. 581, is shown. *Baltimore, etc., R. Co. v. Wilson*, (1916) 242 U. S. 295, 37 S. Ct. 123, 61 U. S. (L. ed.) 312.

Therefore, where plaintiff's contributory negligence and defendant's violation of the Safety Appliance Acts are concurring proximate causes, the Employers' Liability Act requires the former to be disregarded. *Spokane, etc., R. Co. v. Campbell*, (1916) 241 U. S. 497, 36 S. Ct. 683, 60 U. S. (L. ed.) 1125.

Application of doctrine.—Where a person was injured by inhaling spray while using a painting machine in painting cars of which danger he had no knowledge, it was held that the company was guilty of negligence in failing to provide him with an appliance to be used to protect persons thus engaged from such danger where the company knew of the appliance. *Baltimore, etc., R. Co. v. Branson*, (1916) 128 Md. 678, 98 At. 225.

"When, . . . , the carrier has discharged his statutory duty to the engineer by turning over to him a locomotive engine and boiler and appurtenances in

proper condition and safe to operate, it is not answerable to the engineer as an insurer of his safety throughout the run; and, in order for his personal representative to maintain an action for his death caused by the explosion of the boiler, the burden rests upon the plaintiff to show that the defendant has been guilty of the negligence charged in the declaration." *Virginian R. Co. v. Andrews*, (1916) 118 Va. 482, 87 S. E. 577.

Violation need not be sole cause.—The violation of the Safety Appliance Acts need not be the sole efficient cause in order that an action will lie. *Spokane, etc., R. Co. v. Campbell*, (1916) 241 U. S. 497, 36 S. Ct. 683, 60 U. S. (L. ed.) 1125.

So the liability of the carrier to employees for failure to comply with these acts springs from its being made unlawful to use cars not equipped as required, not from the position the employee may be in or the work which he may be doing at the moment when he is injured. *Louisville, etc., R. Co. v. Layton*, (1917) 243 U. S. 617, 37 S. Ct. 456, 61 U. S. (L. ed.) 931.

And where there is a violation of the Safety Appliance Acts any improper management of the appliance can only be regarded as contributory negligence, consideration of which is excluded. *San Antonio, etc., R. Co. v. Wagner*, (1916) 241 U. S. 476, 36 S. Ct. 626, 60 U. S. (L. ed.) 1110.

Element of proximate cause eliminated.

—The element of proximate cause is eliminated where a violation of the Safety Appliance Acts is shown. *Spokane, etc., R. Co. v. Campbell*, (1916) 241 U. S. 497, 36 S. Ct. 683, 60 U. S. (L. ed.) 1125.

Pleading.—A complaint alleging as negligence that the defendant carrier had a car equipped with an automatic coupler which was broken, defective and inoperative states a cause of action within the express terms of the statute, although it does not in express terms allege that the negligence charged was a violation of the Act as to having the cars equipped with automatic couplers. *Wagner v. Chicago, etc., Ry. Co.*, (1917) 277 Ill. 114, 115 N. E. 201.

Evidence.—"To sustain a finding that a defective appliance caused an accident, it is necessary that some circumstances be shown which establish, not only that the accident may have happened from the cause alleged, but which indicate, to some extent at least, that such was the cause." *Hurley v. Illinois Cent. R. Co.*, (1916) 133 Minn. 101, 157 N. W. 1005.

Evidence.—Burden of proof.—The defendant has the burden of proving contributory negligence. *Grand Trunk Western R. Co. v. Thrift Trust Co.*, (Ind. App. 1917) 115 N. E. 685.

Instructions.—It has been held proper to instruct the jury that if they found certain facts their verdict should be for

the plaintiff, even if they should find him guilty of negligence contributing to the injury, but that in that event the damages should be diminished by them in proportion to the amount of negligence attributable to the injured employee. *Kippenbrock v. Wabash R. Co.*, (1917) 270 Mo. 479, 194 S. W. 50.

In an action for damages by a railroad conductor against his employer, while engaged in interstate commerce upon one of the trains of his employer, under the federal Employers' Liability Act, where it appears that the negligence of the defendant and that of the plaintiff concurred in producing the injury, the negligence of both parties is to be deemed the proximate cause of the injury; and it is not error for the judge, in referring to causal negligence of the parties, to instruct the jury that if it should be found that the plaintiff was injured as alleged, the plaintiff would be entitled to recover, if the defendant was negligent in the manner alleged, and if such negligence "contributed in whole or in part to the injury." *Louisville, etc., R. Co. v. Paschal*, (1916) 145 Ga. 521, 89 S. E. 620.

A charge to the jury that if they find plaintiff guilty of contributory negligence they should "reduce his damages in proportion to the amount of negligence which is attributable to him" has been held not to be erroneous because of a failure to define the word proportion. *St. Louis, etc., R. Co. v. Brown*, (1916) 241 U. S. 223, 36 S. Ct. 602, 60 U. S. (L. ed.) 966. See also *Waina v. Pennsylvania Co.*, (1915) 251 Pa. 213, 96 Atl. 461.

Where there is no proof of any fact or circumstance tending to show contributory negligence on the part of the employee it is prejudicial error to give an instruction on the question from which the jury may infer a right to diminish the damages recoverable. *Davis v. Cincinnati, etc., Ry. Co.*, (1916) 172 Ky. 55, 188 S. W. 1061.

Where the testimony is uncontradicted that an employee knew nothing of special damages attending his work or that he was at all informed by his employers on the subject there is no ground for any charge as to contributory negligence on his part in reduction of damages. *Norton v. Maine Cent. R. Co.*, (1917) 116 Me. 147, 100 Atl. 598.

Where the instructions which applied the statutory rule that contributory negligence, under the federal Act, operates to diminish the amount of recovery rather than to defeat the action were correct in principle, if incomplete, appellant should have requested a more specific charge in order to make the error, if any, available on appeal. *Cincinnati, etc., R. Co. v. Gross*, (Ind. 1917) 114 N. E. 962.

If the defendant desires to have the damages reduced on account of plaintiff's

failure to properly care for himself, it should ask an instruction to that effect. *Delano v. Roberts*, (Mo. App. 1916) 182 S. W. 771.

Although there is no evidence to support an instruction upon the question of contributory negligence yet a defendant has no ground of complaint where the jury were told that the negligence of deceased, if any, should diminish the damages "in proportion to his negligence as compared with the combined negligence of himself and defendant." *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840.

Questions for jury.—*The question of contributory negligence* is one for the jury to determine. *Louisville, etc., R. Co. v. Blankenship*, (Ala. 1917) 74 So. 960; *St. Louis, etc., R. Co. v. Steel*, (Ark. 1917) 197 S. W. 288; *Lusk v. Osborne*, (1917) 127 Ark. 170, 191 S. W. 944; *St. Louis, etc., R. Co. v. Stewart*, (1916) 124 Ark. 437, 187 S. W. 920; *Louisville, etc., R. Co. v. Coatney*, (1917) 20 Ga. App. 713, 93 S. E. 228; *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244; *Bolch v. Chicago, etc., R. Co.*, (1916) 90 Wash. 47, 155 Pac. 422.

The question of the reduction of damages for contributory negligence is one for the jury. *Thomas v. Atchison, etc., Ry. Co.*, (1917) 101 Kan. 528, 168 Pac. 322.

Whether the act of an injured employee was negligence which was the sole cause of the injury is a question for the jury. *Lusk v. Osborne*, (1917) 127 Ark. 170, 191 S. W. 944.

The question of comparative negligence where both parties are negligent is one for the jury. *Louisville & N. R. Co. v. Blankenship*, (1917) 74 So. 960.

1909 Supp., p. 585, sec. 4.

Construction and application in general.—There is no assumption of risk where the injury is caused by a violation of the Safety Appliance Acts. *Wagner v. Chicago, etc., R. Co.*, (1916) 200 Ill. App. 305; *Christy v. Wabash R. Co.*, (1916) 195 Mo. App. 232, 191 S. W. 241; *Sorenson v. Northern Pac. R. Co.*, (1917) 53 Mont. 268, 163 Pac. 560.

"The rule as to the assumption of risk remains, except in those cases where the defendant has been guilty of violating some statute enacted for the safety of employees, and by such violation contributed to the injury complained of." *Gaines v. Grand Trunk R. Co.*, (1916) 193 Mich. 398, 159 N. W. 542.

The Boiler Inspection Act of Feb. 17, 1911, ch. 103, § 2, 1912 Supp., p. 339, was "enacted for the safety of employees" within this section. *Great Northern R. Co. v. Donaldson*, (1918) 246 U. S. 121, 30 S. Ct. 230, 62 U. S. (L. ed.) 616, *affirming* (1916) 89 Wash. 161, 154 Pac.

133, holding that there was no error in refusing to give, in an action for death of an engineer, an instruction to the effect that if he was familiar with the type of construction used for the particular form of negligence involved, and knew the danger likely to arise therefrom, or, in the exercise of reasonable care, should have known of such things, he should be deemed to have assumed the risk.

Effect limited to terms of Act.—By the Employers' Liability Act the defense of assumption of risk remains as at common law, saving in the cases mentioned in this section, that is to say: "any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee." *Jacobs v. Southern R. Co.*, (1916) 241 U. S. 229, 36 S. Ct. 588, 60 U. S. (L. ed.) 970; *Washington, etc., R. Co. v. Smith*, (1916) 45 App. Cas. (D. C.) 192; *Macon, etc., R. Co. v. Musgrove*, (1916) 145 Ga. 647, 89 S. E. 767; *Southern R. Co. v. Blackwell*, (1917) 20 Ga. App. 630, 93 S. E. 321; *Carlson v. Chicago Great Western R. Co.*, (1917) 205 Ill. App. 156; *Duran v. Atchison, etc., R. Co.*, (1917) 100 Kan. 189, 165 Pac. 653; *McFarland v. Chesapeake, etc., R. Co.*, (1917) 177 Ky. 551, 197 S. W. 944; *Harris v. Cincinnati, etc., R. Co.*, (1917) 176 Ky. 846, 197 S. W. 464; *Cincinnati, etc., R. Co. v. York*, (1917) 176 Ky. 9, 194 S. W. 1034; *Jones v. Southern Ry.*, (1917) 175 Ky. 455, 194 S. W. 558; *Young v. Norfolk, etc., R. Co.*, (1916) 171 Ky. 510, 188 S. W. 621; *Louisville, etc., R. Co. v. Wright*, (Ky. 1916) 185 S. W. 861; *Norton v. Maine Cent. R. Co.*, (1917) 116 Me. 147, 100 Atl. 598; *Sims v. Minneapolis, etc., R. Co.*, (1917) 196 Mich. 114, 162 N. W. 988; *Gainey v. Grand Trunk R. Co.*, (1916) 193 Mich. 398, 159 N. W. 542; *Elliott v. Illinois Cent. R. Co.*, (1916) 111 Miss. 426, 71 So. 741; *Sorenson v. Northern Pac. R. Co.*, (1917) 53 Mont. 268, 163 Pac. 560; *Chicago, etc., R. Co. v. Jackson*, (Okla. 1916) 160 Pac. 736; *Gulf, etc., R. Co. v. Cooper*, (Tex. Civ. App. 1917) 191 S. W. 579; *Norfolk, etc., R. Co. v. Tucker*, (1917) 120 Va. 540, 91 S. E. 614; *Hull v. Virginian R. Co.*, (1916) 78 W. Va. 25, 88 S. E. 1060; *Hovaneck v. Great Northern R. Co.*, (1917) 165 Wis. 511, 162 N. W. 927; *Smiegl v. Great Northern R. Co.*, (1917) 165 Wis. 57, 160 N. W. 1057.

"At common law the rule is well settled that a servant assumes extraordinary risks incident to his employment, or risks caused by the master's negligence which are obvious or fully known and appreciated by him;" and the risks which the employee still assumes in other cases, notwithstanding the elimination of the defense of assumed risk by this section, include those incident to the negligence of the carriers, officers, agents, or em-

ployees which are obvious or fully known to and appreciated by him. *Boldt v. Pennsylvania R. Co.*, (1918) 245 U. S. 441, 38 S. Ct. 139, 62 U. S. (L. ed.) 385, *affirming* (C. C. A. 2d Cir. 1914) 218 Fed. 367, 134 C. C. A. 175.

Where if it had not been for the defective condition of a coupling, the plaintiff would not have been compelled to go between the cars to make a coupling and therefore would not have been injured, the company cannot avail itself of the defense of assumption of risk. *St. Louis Merchants' Bridge Terminal R. Co. v. Schuerman*, (C. C. A. 8th Cir. 1916) 237 Fed. 1, 150 C. C. A. 203.

Handholds.—Where there is a violation of the Safety Appliance Act in regard to handholds on car, an employee by continuing to work with knowledge of the defective condition of a handhold is not to be regarded as having assumed any of the risk which flows from the act of the company in failing to perform its statutory duty. *Cook v. Union Pac. R. Co.*, (1916) 178 Ia. 1030, 158 N. W. 521.

Violation of Hours of Service Act.—The question of assumption of risk is eliminated when a violation of the Hours of Service Act is shown. *Baltimore, etc., R. Co. v. Wilson*, (1916) 242 U. S. 295, 37 S. Ct. 123, 61 U. S. (L. ed.) 312.

The statutory law of the state has no application and the question of assumed risk is to be determined by the provisions of the Act itself and the common law, as recognized by the federal courts. *Panhandle, etc., R. Co. v. Brooks*, (Tex. Civ. App. 1917) 199 S. W. 665.

Decisions of the federal courts control the question whether there was an assumption of risk by an employee. *Roberts v. Cleveland, etc., R. Co.*, (1916) 202 Ill. App. 480.

But it has been held that where a state Supreme Court holds that the issue of assumption of risk was not made or submitted to the trial court (a conclusion fully supported by the record) and therefore under the state practice no question concerning that subject was presented on appeal, the conclusion of the state Supreme Court denied no right of a federal character. *Southern R. Co. v. Lloyd*, (1916) 239 U. S. 496, 36 S. Ct. 210, 60 U. S. (L. ed.) 402, *affirming* (1914) 166 N. C. 24, 81 S. E. 1003.

Defective appliance not embraced in terms of Act.—"The fact that the action was brought under the federal Employers' Liability Act does not prevent the appellee from relying upon the defense of assumption of risk. That statute only abolishes the assumption of risk as a bar to an action against a railroad company by an employee for an injury attributable to defective appliances upon or connected with the trains of the railroad company; and neither a station water tank, rope, nor

scaffold is an appliance within the meaning thereof. Hence the common-law rule with respect to the employee's assumption of risk of injury from a defective appliance governs an action under the Employers' Liability Act where such appliance is not embraced by the terms thereof." *McFarland v. Chesapeake, etc., R. Co.*, (1917) 177 Ky. 551, 197 S. W. 944.

Pleading.—The plea of assumption of risk is affirmative in character and the plaintiff is not required to negative it in order to make a prima facie case. *Kenyon v. Illinois Cent. R. Co.*, (1916) 173 Ia. 484, 155 N. W. 810. Compare *Cincinnati, etc., R. Co. v. Gross*, (Ind. App. 1916) 111 N. E. 653.

A defense that the plaintiff assumed the risks of defendant's negligence should be specially pleaded. *Phillips v. Union Pac. R. Co.*, (1916) 100 Neb. 157, 158 N. W. 966.

Assumed risk when set up as a defense is subject matter for a special plea. *Alabama Great Southern R. Co. v. Skotzy*, (1916) 196 Ala. 25, 71 So. 335.

Principles generally as to assumption of risk.—*It is a general rule that an employee assumes the usual and ordinary risks of his employment.* *Lincoln v. Pryor*, (1916) 199 Ill. App. 228; *Koepke v. Chicago, etc., R. Co.*, (1916) 200 Ill. App. 247; *Jones v. Southern Ry.*, (1917) 175 Ky. 455, 194 S. W. 558; *Louisville, etc., R. Co. v. Wright*, (Ky. 1916) 185 S. W. 861; *Chapman v. Ann Arbor R. Co.*, (1917) 196 Mich. 671, 163 N. W. 107; *Kansas City, etc., R. Co. v. Finke*, (Tex. Civ. App. 1917) 190 S. W. 1143. And see title *Master and Servant*, 18 R. C. L. 671 *et seq.*

And, one is only barred from recovery when it appears that he assumed the risk incident to his employment. *Southern R. Co. v. Mays*, (C. C. A. 4th Cir. 1916) 239 Fed. 41, 152 C. C. A. 91.

"The true rule of law deducible from the authorities is that the servant assumes all the ordinary, usual and normal risks of the business after the master has used reasonable care for his protection, and also all such other risks as he knows of, or which were so unquestionably plain and clear that he must have known of their existence and their danger to him." *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244. To the same point see *Harris v. Cincinnati, etc., R. Co.*, (1917) 176 Ky. 846, 197 S. W. 464; *Louisville, etc., R. Co. v. Wright*, (Ky. 1916) 185 S. W. 861; *Sorenson v. Northern Pac. R. Co.*, (1917) 53 Mont. 268, 163 Pac. 560; *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411; *Kansas City, etc., R. Co. v. Finke*, (Tex. Civ. App. 1917) 190 S. W. 1143.

Unusual or extraordinary risks.—It may be stated generally that in the absence of notice or knowledge an employee

does not assume those risks which are unusual or extraordinary in character. *Koepke v. Chicago, etc., R. Co.*, (1916) 200 Ill. App. 247.

Distinction between assumed risk and contributory negligence.—"There is a well-recognized distinction between assumed risk and contributory negligence. Contributory negligence implies fault or a breach of duty on the part of the injured party, either by doing or by failing to do something that a reasonably prudent man would not have done, or would not have failed to do, to avoid being injured under the same or similar circumstances. On the other hand, there is a certain amount of danger incident to many employments, which ordinary prudence cannot always avoid. Where these are known to the employee, they are assumed by him as an implied part of his contract of employment. An employee assumes the risk of those dangers known to him to be ordinarily incident to the labor which he has agreed to perform, or which are so obvious that a man of ordinary intelligence and prudence must necessarily be presumed to have learned of them in the ordinary course of his employment." *Gulf, etc., R. Co. v. Cooper*, (Tex. Civ. App. 1917) 191 S. W. 579. And see title *Master and Servant*, 18 R. C. L., sec. 165, p. 673.

Actual knowledge or obvious risk.—There is no rule more firmly fixed in this state than the one which says that if the servant knows the danger, and appreciates it, it being obvious, and yet continues in the work, he assumes the risk. *Jones v. Southern Ry.*, (1917) 175 Ky. 455, 114 S. W. 558. See also *Baltimore, etc., R. Co. v. Branson*, (1916) 128 Md. 678, 98 Atl. 225.

Appliances or place of work not safe.—"The law is that although it is the duty of the master to furnish safe places in which their servants may perform their work, and safe tools and appliances with which the work may be done, still, if the places or appliances are not safe, and the servant knows it and appreciates the danger in attempting to use them, he assumes the risk incident to their use under the circumstances, and if injured the master is not liable." *Young v. Norfolk, etc., R. Co.*, (1916) 171 Ky. 510, 188 S. W. 621.

The recognized general rule is that workmen engaged to diagnose, repair, and make safe a tool, piece of machinery, appliance, or place to work, which is defective, out of repair, or dangerous, assume the added risk incident to the existing condition of the work or place. *Gaines v. Grand Trunk R. Co.*, (1916) 193 Mich. 398, 159 N. W. 542.

And if the servant continues in the service with knowledge of defective appliances, he is deemed to have waived the master's negligence, and to have assumed

the risk in spite of master's negligence. *Lorick v. Seaboard Air Line Ry.*, (1915) 102 S. C. 276, 86 S. E. 675, Ann. Cas. 1917D 920.

Remaining at work in ignorance of known danger.—While most courts agree that an employee cannot, without impairing his right to recover from the employer, remain at work in the presence of a known danger so imminent that no reasonably prudent man would confront it, even where the employer has promised reparation, they differ as to whether this is to be placed upon the ground of assumption of risk or of contributory negligence. The distinction, which was of little consequence when assumption of risk and contributory negligence led to the same result, becomes important in actions founded upon the federal Employers' Liability Act, which in ordinary cases recognizes assumption of risk as a complete bar to the action, while contributory negligence merely mitigates the damages. *Seaboard Air Line Ry. v. Horton*, (1916) 239 U. S. 595, 36 S. Ct. 180, 60 U. S. (L. ed.) 458, *affirming* (1915) 169 N. C. 108, 85 S. E. 218, which also held that to relieve the employer from responsibility for injuries that may befall the employee while remaining at his work in reliance upon a promise of reparation, there must be something more than knowledge by the employee that danger confronts him, or that it is constant. The danger must be imminent—immediately threatening—so as to render it clearly imprudent for him to confront it, even in the line of duty pending the promise.

Effect of want of knowledge.—An employee does not assume risks of which he has no knowledge. *Illinois Cent. R. Co. v. Skinner*, (1917) 177 Ky. 62, 197 S. W. 552; *Winslow v. Missouri, etc., R. Co.*, (Mo. App. 1916) 192 S. W. 121.

"Knowledge of the risk is the watchword of the defense of assumption of risks." *Cincinnati, etc., R. Co. v. Thompson*, (C. C. A. 6th Cir. 1916) 236 Fed. 1, 149 C. C. A. 211.

So a railway employee does not assume the risk arising from unknown defects in engines, machinery, or appliances. *Central Vermont R. Co. v. White*, (1915) 238 U. S. 507, 35 S. Ct. 865, 59 U. S. (L. ed.) 1433, Ann. Cas. 1916B 252.

Assurance of superior as to safety.—An employee does not assume a risk that his superior assures him does not exist. *Louisville, etc., R. Co. v. Thomas*, (1916) 170 Ky. 145, 185 S. W. 840. And see title *Master and Servant*, 18 R. C. L., sec. 186, p. 703.

"Where the question as to the safety of appliances is in doubt, the servant is not bound to set up his judgment against that of the master." *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961. See also *Coal, etc., R. Co. v.*

Deal, (C. C. A. 4th Cir. 1916) 231 Fed. 604, 145 C. C. A. 490; *Jones v. Southern Ry.*, (1917) 175 Ky. 455, 194 S. W. 558.

Acting in obedience to orders of superior.—Where the complaint showed that appellee's decedent was inexperienced in railroading, and that he had been employed as a freight brakeman but a few days, all of which was known to appellant; that he did not see or know of the proximity of the car on the passing track to the entrance of the back track; that when injured he was obeying the orders of his foreman, whose orders he was required to obey; and that he had no warning, etc., it was held that these averments made the complaint sufficient as against the charge that it showed that decedent assumed the risk of the injury which resulted in his death. *Chicago, etc., R. Co. v. Freightner*, (Ind. App. 1916) 114 N. E. 659. And see title *Master and Servant*, 18 R. C. L., sec. 185, p. 701.

And where an order given called for quick action upon the part of the men, and did not afford them an opportunity to consider whether they could do so safely or not, the doctrine of assumption of risk has no application. *Topore v. Boston, etc., R. Co.*, (N. H. 1916) 100 Atl. 153. See also *Duran v. Atchison, etc., R. Co.*, (1917) 100 Kan. 189, 165 Pac. 653.

"The employee has the right to assume that the master has used due diligence to perform all the primary duties incumbent upon him when he assigns a duty to be performed." *Sorenson v. Northern Pac. R. Co.*, (1917) 53 Mont. 268, 163 Pac. 560.

Even though an employee is ordered to do a certain act, as for instance to cross a track in front of an approaching train, yet if the danger is so obvious and imminent that an ordinarily prudent person would have refused to encounter it, he will be held to have assumed the risk. *Louisville, etc., R. Co. v. Williams*, (1917) 175 Ky. 679, 194 S. W. 920.

Discontinuance of precautionary measures.—"The discontinuance of a precautionary measure amounts to an assertion of the master's judgment that it is unnecessary, while the failure to originally establish such precaution may have resulted from oversight." *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961.

Negligence of employer.—It is a general rule, except as modified in the federal and in some state courts, that the employee does not assume the risk of the employer's negligence. *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51; *Chesapeake, etc., R. Co. v. Shaw*, (1916) 168 Ky. 537, 182 S. W. 653; *Winslow v. Missouri, etc., R. Co.*, (Mo. App. 1916) 192 S. W. 121; *Young v. Lusk*, (1916) 268 Mo. 625, 187 S. W. 849; *Chicago, etc., R. Co. v. De*

Bord, (Tex. 1917) 192 S. W. 767; *Kansas City, etc., R. Co. v. Finke*, (Tex. Civ. App. 1917) 190 S. W. 1143; *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528. And see title *Master and Servant*, 18 R. C. L., sec. 168, p. 677.

Risks arising from the employer's negligence are not ordinary but extraordinary. *Phillips v. Union Pac. R. Co.*, (1916) 100 Neb. 157, 158 N. W. 966.

"He does not assume the risks which arise out of the failure of the employer to exercise due care with respect to providing a safe place of work, provided he does not know of such failure, or be charged with knowledge thereof." *Kansas City, etc., R. Co. v. Finke*, (Tex. Civ. App. 1917) 190 S. W. 1143. See also *Cincinnati, etc., R. Co. v. Claybourne*, (1916) 169 Ky. 315, 183 S. W. 903; *Sorenson v. Northern Pac. R. Co.*, (1917) 53 Mont. 268, 163 Pac. 560; *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411.

Rule in federal courts.—"The rule that the servant never assumes the risk of the negligence of the master is not recognized in the federal courts." *Chicago, etc., R. Co. v. Hughes*, (Okla. 1917) 166 Pac. 411.

"While an employee assumes the risks and dangers ordinarily incident to the employment in which he voluntarily engages, so far as these are not attributable to the negligence of the employer or of those for whose conduct the employer is responsible, the employee has a right to assume that the employer has exercised proper care with respect to providing a reasonably safe place of work (and this includes care in establishing a reasonably safe system or method of work) and is not to be treated as assuming a risk that is attributable to the employer's negligence until he becomes aware of it, or it is so plainly observable that he must be presumed to have known of it. The employee is not obliged to exercise care to discover dangers not ordinarily incident to the employment, but which result from the employer's negligence." *Chesapeake, etc., Co. v. Proffitt*, (1916) 241 U. S. 462, 36 S. Ct. 620, 60 U. S. (L. ed.) 1102. See also *Cincinnati, etc., R. Co. v. Hall*, (C. C. A. 6th Cir. 1917) 243 Fed. 76, 155 C. C. A. 606.

Appliances furnished.—The servant assumes the ordinary risk incident to his labor, but he does not assume such risks as may be caused by the master negligently failing to furnish suitable appliances to perform his work. *Lorick v. Seaboard Air Line-Ry.*, (1915) 102 S. C. 276, 86 S. E. 675, Ann. Cas. 1917D 920.

Negligence of fellow servant.—It is a general rule that an employee does not assume the risks of negligence on the part of fellow servants. *Arizona Eastern R. Co. v. Bryan*, (1916) 18 Ariz. 106, 157 Pac. 376; *Chapman v. United States Express Co.*, (1916) 192 Mich. 654, 159 N.

W. 308; *Thompson v. Minneapolis, etc., R. Co.*, (1916) 133 Minn. 203, 158 N. W. 42; *Koukouris v. Union Pac. R. Co.*, (1916) 193 Mo. App. 495, 186 S. W. 545; *Willever v. Delaware, etc., R. Co.*, (1916) 89 N. J. L. 697, 99 Atl. 321; *Gulf, etc., R. Co. v. Hall*, (Tex. Civ. App. 1917) 196 S. W. 613; *Anest v. Columbia, etc., R. Co.*, (1916) 89 Wash. 609, 154 Pac. 1100; *Hovaneck v. Gt. Northern R. Co.*, (1917) 165 Wis. 511, 162 N. W. 927.

An employee will not be considered to have assumed a risk incident to a situation over which he has no control and which has been created by the negligence of a fellow servant. *Southern R. Co. v. Mays*, (C. C. A. 4th Cir. 1916) 239 Fed. 41, 152 C. C. A. 91.

"Before an employee will be held to have assumed the risk arising out of the negligent conduct of his fellow, it must be shown that such negligent conduct was known to the employee or so customary that he should be charged therewith, and that he appreciated, or was bound to appreciate, the danger." *Panhandle, etc., R. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528.

"The federal authorities seem to hold that in order to make the negligence of the fellow servant one of the assumed risks under this act, the injured employee must actually know of the fact of the negligence of his fellow servant, or that such negligence was so customary that he would be charged with knowledge thereof." *Chapman v. U. S. Express Co.*, (1916) 192 Mich. 654, 159 N. W. 308.

Pleading.—If any defect exists in the language of the complaint failing to set forth the fact that the man who kicked the car was acting in the scope of his employment, the answer cures such defect, where the defendant admitted that the injury was inflicted at a time the plaintiff, together with other employees, was in the performance of his duty in defendant's employment. *Arizona Eastern R. Co. v. Byran*, (1916) 18 Ariz. 106, 157 Pac. 376.

Particular employees—Brakeman.—He assumes those risks which are patent and obvious and incidentally occurring in the course of his employment as brakeman but not those of hidden or latent dangers of which he is ignorant or with knowledge of which he is not charged and with respect to which it is the duty of the company to warn him. *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51.

A brakeman cannot be said to assume the risks arising from the negligent acts of the conductor. *Illinois Cent. R. Co. v. Norris*, (C. C. A. 7th Cir. 1917) 245 Fed. 926, 158 C. C. A. 214.

Section men, trackwalkers and repairmen.—A person engaged in the usual track work done by section men assumes the risk of the occasional necessity to run

trains on tracks intended for trains going in the opposite direction, but the risk assumed is subject to the limitation that such trains shall be run with the care to be reasonably expected under such conditions. *Southern R. Co. v. McGuin*, (C. C. A. 4th Cir. 1917) 240 Fed. 649, 153 C. C. A. 447.

In *Carnahan v. Chicago, etc., R. Co.*, (Neb. 1917) 165 N. W. 956, it was held that the evidence did not justify holding as matter of law that the plaintiff, a section hand had assumed the risk of injury from a defective hand car, especially as he had complained of its unsafe condition to his foreman, who had promised speedily to replace it.

Where a person undertakes work in a carrier's repair yard he assumes the risks naturally incident to the work. *Sims v. Minneapolis, etc., R. Co.*, (1917) 196 Mich. 114, 162 N. W. 988.

"It is obvious that, even where a railroad operates its trains and moves its switch drafts in a proper and careful manner, trackwalkers and repairmen are necessarily subjected to great risks. Their very occupation is one of constant peril. Indeed, it follows from the nature of such employment that the duty of self-preservation has to rest on them, for no adequate protection, other than self-protection, can be afforded them. And such has been the reasonable holding of the law." *Connelley v. Pennsylvania R. Co.*, (C. C. A. 3d Cir. 1915) 228 Fed. 322, 142 C. C. A. 614.

Burden of proof—Assumption of risk.—The burden of proof on the issue of assumption of risk is on the employer. *Kanawha, etc., R. Co. v. Kerse*, (1916) 239 U. S. 576, 36 S. Ct. 174, 60 U. S. (L. ed.) 448; *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961; *Robie v. Boston, etc., R. Co.*, (Vt. 1917) 100 Atl. 925. See also title *Master and Servant*, 18 R. C. L., sec. 126, p. 631.

Questions for court and jury—general rule.—It is proper to submit to the jury the question of assumption of risk if there is evidence on the subject, otherwise it is one of law. *Southern R. Co. v. Mays*, (C. C. A. 4th Cir. 1916) 239 Fed. 41, 152 C. C. A. 91; *Louisville, etc., R. Co. v. Coatney*, (1917) 20 Ga. App. 713, 93 S. E. 228; *Lincoln v. Pryor*, (1916) 199 Ill. App. 228; *Norton v. Maine Cent. R. Co.*, (1917) 116 Me. 147, 100 Atl. 598; *Chapman v. Ann Arbor R. Co.*, (1917) 196 Mich. 671, 163 N. W. 107; *Armbrrecht v. Delaware, etc., R. Co.*, (1917) 90 N. J. L. 529, 101 Atl. 203; *Kansas City, etc., R. Co. v. Finke*, (Tex. Civ. App. 1917) 190 S. W. 1143; *Chesapeake, etc., R. Co. v. Meadows*, (1916) 119 Va. 33, 89 S. E. 244.

"In a clear case the question of assumption of a risk by the employee is one of law for the court, but where there is doubt as to the facts or as to the infer-

ences to be drawn from them, it becomes a question for the jury." *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961. See also *Falyk v. Pennsylvania R. Co.*, (1917) 256 Pa. St. 397, 100 Atl. 961; *Philadelphia, etc., R. Co. v. Marland*, (C. C. A. 3d Cir. 1917) 239 Fed. 1, 152 C. C. A. 51.

1909 Supp., p. 585, sec. 5.

A contract requiring notice of the injury as a condition precedent to recovery even though valid at common law, is invalid as a defense to an action under this Act. *Panhandle, etc., R. Co. v. Brooks*, (Tex. Civ. 1917) 199 S. W. 665.

Independent contractor agreeing to assume all liability.—An agreement between an independent contractor and a railway company, by which he assumed all liability for injuries to or death of himself and persons in his employ, is not violative of this section. *Chicago, etc., R. Co. v. Bond*, (1915) 240 U. S. 449, 36 S. Ct. 403, 60 U. S. (L. ed.) 735.

A release after injury for a good consideration, and in the absence of proof that it was not fairly entered into, is binding upon the parties, and a bar to an action for damages. *Mitchell v. Louisville, etc., R. Co.*, (1915) 194 Ill. App. 77; *Ballenger v. Southern Ry. Co.*, (1916) 106 S. C. 200, 90 S. E. 1019; *Panhandle, etc., Ry. Co. v. Fitts*, (Tex. Civ. App. 1916) 188 S. W. 528. See also *Anderson v. Oregon Short Line R. Co.*, (1916) 47 Utah 614, 155 Pac. 446; *Patton v. Atchison, etc., Ry. Co.*, (Okla. 1916) 158 Pac. 576.

Releases given to persons not employees.—"This provision applies only to the exemption of the interstate carrier from the liability imposed by the act. It does not attempt to regulate contracts between the employee and the insurance company, by the terms of which the insurance is forfeited. The agreement between the society and the employee of the railway was that if he or his representative brought suit against the railway such action would work a forfeiture of the insurance. No good reason appears why the parties might not make such an agreement. The employee still retained all his rights to pursue his remedy against the railway under the federal statute. The right to the insurance was not one created by the statute. It arose from the agreement of the parties; and there is neither justice nor logic in the proposition that the employee or his beneficiary may claim the benefits of the contract and at the same time repudiate its burdens." *Wilson v. Grand Trunk R., etc., Soc.*, (N. H. 1916) 98 Atl. 478.

Set-off.—"As we construe the statute, the proviso applies only to contracts which enable the carrier to relieve itself of further liability. Besides, the contract in

this case was one of insurance pure and simple, by which the company in consideration of the payment by plaintiff of a premium each month guaranteed to pay plaintiff for loss of time for a certain period upon certain conditions. It did not provide that plaintiff should accept his insurance in case of injury in lieu of his right to hold defendant for liability for the same injuries on the ground of defendant's negligence. . . . For these reasons we conclude that defendant cannot urge the set-off, and that there was no error in refusing the instructions asked upon that branch of the case." *McAdow v. Kansas City Western R. Co.*, (1917) 100 Kan-309, L. R. A. 1917E 539, 164 Pac. 177.

1909 Supp., p. 585, sec. 6.

See notes to this title RAILROADS, 1912 Supp., p. 335, § 1, *infra*, this page.

1909 Supp., p. 585, sec. 7.

For cases of actions against a receiver under this Act, see *Lusk v. Osborn*, (1917) 127 Ark. 170, 191 S. W. 944; *Holloway v. Dickinson*, (1917) 137 Minn. 410, 163 N. W. 791.

1912 Supp., p. 335, sec. 1. [*Act of April 5, 1910.*]

I. LIMITATION OF ACTION

Necessity of bringing suit within period.

—In order for a plaintiff to recover for injuries received by him, suit must be commenced within two years from the date they were received. *Baltimore, etc., R. Co. v. Branson*, (1916) 128 Md. 678, 98 Atl. 225; *Bement v. Grand Rapids, etc., R. Co.*, (1916) 194 Mich. 64, 160 N. W. 424, L. R. A. 1917E 322.

"The limitation relates, not merely to the remedy, but to the right." *American R. Co. v. Coronas*, (C. C. A. 1st Cir. 1916) 230 Fed. 545, 144 C. C. A. 599, L. R. A. 1916C 1095.

"There being no exception in the federal act, extending the time within which a suit for a personal injury by an employee of a railroad engaged in interstate commerce can be brought, in the event of his insanity, courts are not at liberty to apply state statutes extending or tolling the time for filing suit, or extending the time for bringing the suit by judicial construction." *Alvarado v. Southern Pac. Co.*, (Tex. Civ. App. 1917) 193 S. W. 1108.

Time of accrual of cause of action.—The statute commences to run as against a recovery by the injured employee from the date of the accident. *Alvarado v. Southern Pac. Co.*, (Tex. Civ. App. 1917) 193 S. W. 1108.

There is, however, some conflict as to when the period commences to run in

case of death. Thus, in this connection, it has been said: "It is a general rule of law that where a cause of action arises, as in this case, after death, it is considered as accruing, for the purpose of the running of the statute, only from the time when there is some one in existence capable of suing, and, if no one but the administrator can sue, that the statute does not begin to run until administration is granted. This principle was announced at an early day." *American R. Co. v. Coronas*, (C. C. A. 1st Cir. 1916) 230 Fed. 545, 144 C. C. A. 599, L. R. A. 1916C 1095.

On the other hand there are cases holding that where the action is one for death the cause of action accrues at the time of death. *Lindsay v. Chicago, etc., R. Co.*, (Okla. 1916) 155 Pac. 1173.

Necessity of plaintiff showing action within statute.—It is incumbent upon the plaintiff to allege and prove that his cause of action was brought within the time limited. *American R. Co. v. Coronas*, (C. C. A. 1st Cir. 1916) 230 Fed. 545, 144 C. C. A. 599, L. R. A. 1916C 1095; *Morrison v. Baltimore, etc., R. Co.*, (1913) 40 App. Cas. (D. C.) 391, Ann. Cas. 1914C 1026 and note.

Necessity of pleading act to obtain benefit of it.—"It is unnecessary to plead the act to obtain the benefit of it, because it is generally held that when neither declaration nor the plea shows that the injury occurred while the employee was engaged in interstate commerce, yet if during the taking of evidence the fact develops, the federal law controls the cause." *Seaboard Air Line R. Co. v. Hess*, (Fla. 1917) 74 So. 500.

Although not pleaded the limitation may be relied on where the record shows that the action was brought too late and the defendant insists on that point, it being apparent in the allegations of the declaration and the admissions of the answer. *Atlantic Coast Line R. Co. v. Burnette*, (1915) 239 U. S. 199, 36 S. Ct. 75, 60 U. S. (L. ed.) 227, *reversing* (1913) 163 N. C. 186, 79 S. E. 414.

"Where a petition upon its face does not show that the cause of action is barred by the statutes of limitations, a demurrer thereto, urged specially upon that ground, should be overruled." *Lindsay v. Chicago, etc., R. Co.*, (Okla. 1916) 155 Pac. 1173.

Determining question when action was commenced.—Under R. S. sec. 721 in JUDICIARY, vol. IV, p. 517, providing that matters respecting procedure shall be governed by the laws of the jurisdiction in which the action is brought, and section 6 of the Employers' Liability Act barring all actions under the Act not commenced within two years after the cause of action arose, whether an action in the state courts was commenced by the service of

a summons and complaint without filing the complaint must be determined by the laws of this state. *Murker v. Northern Pac. R. Co.*, (1917) 95 Wash. 280, 163 Pac. 756.

II. JURISDICTION AND VENUE

Construction and operation generally.—It may well be that instances may arise where inconvenience may result from bringing the action in a district where neither party resides and where the cause of action did not arise; but questions of convenience or of the work which shall be allotted to the various districts of the United States are, within constitutional limitations, entirely questions for the legislative branch. As the Congress has deemed it proper and desirable to confer jurisdiction as provided for in section 6 of this Act, that provision is not to be defeated by an effort at refined distinction. *Connelly v. Central R. Co.*, (S. D. N. Y. 1916) 238 Fed. 932.

Circuit Courts were given jurisdiction of cases to recover damages under the federal Employers' Liability Act. *Louisville, etc., R. Co. v. Holloway*, (1916) 168 Ky. 262, 181 S. W. 1126.

Concurrent jurisdiction of state and federal courts.—This Act is remedial in character, and should be so construed as to prevent the mischief and advance the remedy, and an action based thereon may be maintained either in the state or federal courts. *Farrugia v. Philadelphia, etc., R. Co.*, (1914) 233 U. S. 352, 34 S. Ct. 591, 58 U. S. (L. ed.) 996.

"In view of the powers of the federal government and the states and in the light of the uniform decisions relating to the subject, this provision can only mean that when the jurisdiction of the courts of a state as fixed by local laws empowers them to hear and determine a certain class of actions, an action of that class arising under federal law may be enforced as of right in the state court. The federal act has superseded state laws regulating the relations of employers and employees engaged in interstate commerce by railroad." *Walton v. Pryor*, (1916) 276 Ill. 563, 115 N. E. 2. See also *Pipes v. Missouri Pac. R. Co.*, (1916) 267 Mo. 385, 184 S. W. 79.

Jurisdiction of United States Supreme Court to review.—The United States Supreme Court has jurisdiction on a writ of error to the Court of Appeals of the District of Columbia to review a judgment of that court in a case arising under this Act. *Washington Ry., etc., Co. v. Scala*, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360.

Effect of instituting action in particular jurisdiction.—Where a person under state law can sue in any county of the state in which defendant operates a line of railway, if a suit is commenced in a certain county, the cause of action there-

after will not be regarded as transitory and, as the institution of the suit has located it, it should also be held that the administrator, to whom it survives, has the right to continue the suit in the tribunal where it is pending. *St. Louis, etc., Ry. Co. v. Smitha*, (Tex. Civ. App. 1916) 190 S. W. 237.

III. REMOVAL TO FEDERAL COURT

See notes to JUDICIARY, 1912 Supp., p. 144, § 28, *ante*, this volume, at p. 1314.

1912 Supp., p. 335, sec. 2.

Construction and operation generally.—See *Great Northern R. Co. v. Capital Trust Co.*, (1916) 242 U. S. 144, 37 S. Ct. 41, 61 U. S. (L. ed.) 208, L. R. A. 1917E 1050; *Washington Ry., etc., Co. v. Scala*, (1916) 45 App. Cas. (D. C.) 484.

Under this Act the liability in favor of a person injured is property belonging to him in his lifetime and when he dies intestate the administrator of his estate may enforce, for the benefit of his wife and children, the liability created by the statute. *St. Louis Southwestern R. Co. v. Smitha*, (Tex. Civ. App. 1916) 190 S. W. 237.

Survival of actions.—The administrator of a fatally injured employee might recover the beneficiary's pecuniary loss and also for pain and suffering endured by deceased between the moment of injury and final dissolution. *Great Northern R. Co. v. Capital Trust Co.*, (1916) 242 U. S. 144, 37 S. Ct. 41, 61 U. S. (L. ed.) 208, L. R. A. 1917E 1050.

Under the federal Act providing for the survival of any right of action given by the Act to a person suffering injury, a cause of action for pain and suffering of a deceased railway employee, survived to his mother, the sole beneficiary, and a recovery of the amount of her pecuniary loss resulting from his death and also of damages for his pain and suffering between the time of injury and death was not a double recovery for the same injury. *Calhoun v. Great Northern R. Co.*, (1916) 162 Wis. 264, 156 N. W. 198.

Where no time intervened between the fatal accident and the death of deceased, there could have been no conscious suffering and no cause of action to survive. Hence a plaintiff can recover only pecuniary damages, which can be measured by some reasonable standard. *Chafin v. Norfolk, etc., R. Co.*, (W. Va. 1917) 93 S. E. 822.

"Such pain and suffering as are substantially contemporaneous with death or mere incidents to it, as also the short periods of insensibility which sometimes intervene between fatal injuries and death, afford no basis for a separate estimation or award of damages under statutes like that which is controlling here." *Great Northern R. Co. v. Capital Trust Co.*,

(1916) 242 U. S. 144, 37 S. Ct. 41, 61 U. S. (L. ed.) 208, L. R. A. 1917E 1050; St. Louis, etc., R. Co. v. Craft, (1915) 237 U. S. 648, 35 S. Ct. 704, 59 U. S. (L. ed.) 1160.

"It has been held that the administrator may recover in the same action not only for the pecuniary loss sustained by the beneficiaries, but also damages on account of conscious pain and suffering of deceased, in case the fatal accident did not produce immediate death. . . . In such a case there is an element of damages which cannot be ascertained by any fixed rule of measurement, and which must therefore be left very largely to the judgment of the jury." *Chafin v. Norfolk, etc., R. Co.*, (W. Va. 1917) 93 S. W. 822.

1912 Supp., p. 336, sec. 2.

"The congressional purpose in enacting § 2 of the act is very plain. At the time the act was passed railroad carriers had in service many box cars, requiring for their proper use secure ladders and secure handholds or grabirons on their roofs at the tops of such ladders, and the purpose of this section clearly is to convert the general legal duty of exercising ordinary care to provide such safety appliances and to keep them in repair, into a statutory, an absolute and imperative duty, of making them 'secure' and to enforce the duty by appropriately severe penalties. *Chicago, etc., R. Co. v. U. S.*, [1911] 220 U. S. 559, [31 S. Ct. 612, 55 U. S. (L. ed.) 582]." *Illinois Cent. R. Co. v. Williams*, (1917) 242 U. S. 462, 37 S. Ct. 128, 61 U. S. (L. ed.) 437, *affirming* (Miss. 1916) 72 So. 158.

When section became effective.—In *Illinois, etc., R. Co. v. Williams*, (1917) 242 U. S. 462, 37 S. Ct. 128, 61 U. S. (L. ed.) 437, *affirming* (Miss. 1916) 72 So. 158, it was held that section 2 took effect July 1, 1911, and that it could not, by virtue of anything in section 3, be changed by the Interstate Commerce Commission.

This section as affected by following section.—Section 3 of the Safety Appliance Act provides for a uniform standard of such car equipment applicable to all interstate roads; and an order of the Interstate Commerce Commission, fixing a time for compliance with its order prescribing such uniform standard, did not affect the provisions of section 2, or suspend the operation thereof. *Coleman v. Illinois Cent. R. Co.*, (1916) 132 Minn. 22, 155 N. W. 763. See also *Cook v. Union Pac. R. Co.*, (1916) 178 Ia. 1030, 158 N. W. 521.

In *Coleman v. Illinois Cent. R. Co.*, (1916) 132 Minn. 22, 155 N. W. 763, section 2 was construed in connection with section 3 of the same Act, and it was held that it imposed the absolute duty upon interstate railroad companies of maintain-

ing the appliances and equipment of their cars in secure and safe condition for use, and that the statute became and remained in full force and operation after July 1, 1911.

Secure ladder.—A box car having a handbrake operated from the roof requires also a secure ladder to enable the employee to safely ascend and descend, and a switchman injured by virtue of a defect in one of the handholds or grabirons that form the rungs of the ladder is within the provisions of section 2. *Texas, etc., R. Co. v. Rigby*, (1916) 241 U. S. 33, 36 S. Ct. 482, 60 U. S. (L. ed.) 874, *affirming* (C. C. A. 5th Cir. 1915) 222 Fed. 221, 138 C. C. A. 51.

"Efficient handbrakes."—It is now settled beyond controversy that these Safety Appliance Acts impose upon the carrier an absolute duty (1) to equip its cars with the prescribed appliances, and (2) to maintain such appliances in a secure condition. *Armitage v. Chicago, etc., R. Co.*, (1917) 54 Mont. 38, 166 Pac. 301; *Thayer v. Denver, etc., R. Co.*, (1916) 21 N. M. 330, 154 Pac. 691.

Grabirons.—The federal Safety Appliance Acts require secure grabirons upon a car or caboose in an interstate commerce train; and if a brakeman, while using such a grabiron in the ordinary mode, is injured because it is insecurely fastened, the railway company is liable. *McNaney v. Chicago, etc., R. Co.*, (1916) 132 Minn. 391, 157 N. W. 650.

1912 Supp., p. 336, sec. 3.

Purpose of Act.—"This law requires that ultimately the location of these ladders and hand holds shall be absolutely fixed so that the employee will know certainly that night or day he will find them in like place and of like size and usefulness on all cars, from whatever line or railway or section of the country they may come. This highly important and humane purpose must not be defeated by finesse of construction." *Illinois Cent. R. Co. v. Williams*, (1917) 242 U. S. 462, 37 S. Ct. 128, 61 U. S. (L. ed.) 437, *affirming* (Miss. 1916) 72 So. 158.

Car in actual use.—Where the carrier is sued for injuries caused by failure to comply with this section a defense that the car on which injury occurred was one in actual use at the time of the taking effect of the Act, and therefore excepted from the requirements thereof by order of the Interstate Commerce Commission, must be pleaded and proved. *Cook v. Union Pac. R. Co.*, (1916) 178 Ia. 1030, 158 N. W. 521.

1912 Supp., p. 336, sec. 4.

The purpose and scope of the Act are discussed at considerable length in *Erie R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917)

240 Fed. 28, 153 C. C. A. 64; Chesapeake, etc., R. Co. v. U. S., (C. C. A. 4th Cir. 1915) 226 Fed. 683, 141 C. C. A. 439.

The general rule of statutory construction is that a proviso carves special exceptions only out of a general enacting clause; and that those who set up any such exception must establish it as being within the words as well as the reason thereof. This rule is applicable to the proviso in this section. Baltimore, etc., R. Co. v. U. S., (C. C. A. 6th Cir. 1917) 242 Fed. 420, 155 C. C. A. 196.

Withdrawn from interstate commerce.

—A loaded car is not withdrawn from interstate commerce pending a delay in getting it to its destination. Great Northern R. Co. v. Otos, (1915) 239 U. S. 349, 13 S. Ct. 124, 60 U. S. (L. ed.) 322, *affirming* (1915) 128 Minn. 283, 150 N. W. 922.

Hauling defective car before discovery of defect as violation of section.—Under the original Act, any hauling of a defectively equipped car is a violation thereof, and the amendment of 1910 only permits hauling of such a car after the discovery to the nearest repair point for repairs. Any other hauling and hence a hauling before discovery, though without fault in not discovering, is a violation thereof. U. S. v. Chesapeake, etc., R. Co., (E. D. Ky. 1916) 242 Fed. 151.

"Any car."—"It is said that, because the permission of the proviso of section 4 extends only to 'any car,' it should not be thought of as reaching a train or an association of cars, or, in other words, that general permission to haul a car does not extend to hauling it in a train or in any way except alone. This construction is fatal to the whole purpose of the act, because the original prohibition of section 2 and the penalties of section 4 are not directed against hauling trains having defective cars, but are against hauling 'any car.' Consequently, if a car alone and a car in a train are essentially different things, and if the language 'any car' reaches the former and not the latter, sections 2 and 4, the main sections of the act, do not reach trains including defective cars, but only such a car as a separate unit; and, of course, this construction is not right." Erie R. Co. v. U. S., (C. C. A. 6th Cir. 1917) 240 Fed. 28, 153 C. C. A. 64.

"Upon its line of railroad."—"We are of opinion that the necessary effect of the clause, 'and such equipment shall have become defective or insecure while such car is being used by such carrier upon its line of railroad,' as used in this proviso, is to limit the right of hauling a defective car for repairs, without penalty, to the carrier upon whose line of railroad the car was being used when the equipment became defective." Baltimore, etc., R. Co. v. U. S., (C. C. A. 6th Cir. 1917) 242 Fed. 420, 155 C. C. A. 196.

"Nearest available point."—"Availability obviously depends, under the statute, on other considerations besides that of mere distance. Whether Fitchburg was, under all the circumstances, the 'nearest available' point for the repair of this car, was a matter of business judgment. Upon such a question, involving as it does many elements, the decision of those in charge of the business, if made in good faith, is entitled to serious consideration. It is not shown to have been wrong in this instance." U. S. v. Boston, etc., R. Co., (D. C. Mass. 1916) 243 Fed. 795.

In Pennsylvania Co. v. U. S., (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming*, (N. D. Ohio 1915) 237 Fed. 471, it was held that the defendant had not sustained the burden of showing that, under the circumstances, the hauling of a "hospital" train containing a large number of chained-up cars, a distance of about 100 miles to a repair shop passing on the way other repair shops unjustified by the conjecturally possible (and apparently improbable) saving of a few days' time in effecting the repairs.

"If such movement is necessary."—Under this section repairs to defective couplers must be made on the spot; it is unlawful to move the car. Lorick v. Seaboard Air Line Ry., (S. C. 1916) 93 S. E. 322.

"Remedial action."—"Although § 4 of the act of 1910 relieves the carrier from the statutory penalties while a car is being hauled to the nearest available point for repairs, it expressly provides that it shall not be construed to relieve a carrier from liability in a remedial action for the death or injury of an employee caused by or in connection with the movement of a car with defective equipment. . . . The statute imposes an absolute and unqualified duty to maintain the appliance in secure condition." Texas, etc., R. Co. v. Rigsby, (1916) 241 U. S. 33, 36 S. Ct. 482, 60 U. S. (L. ed.) 874, *affirming* (C. C. A. 5th Cir. 1915) 222 Fed. 221, 138 C. C. A. 51, and *following* Great Northern R. Co. v. Otos, (1915) 239 U. S. 349, 36 S. Ct. 124, 60 U. S. (L. ed.) 322.

Hauling "by means of chains."—In Erie R. Co. v. U. S., (C. C. A. 6th Cir. 1917) 240 Fed. 28, 153 C. C. A. 64, with reference to the subproviso the court said: "This exception or proviso is capable of more than one construction. It may refer only to cars where the coupling devices are so defective that the cars must be hauled by chains instead of drawbars. This we call the first construction. . . . We are convinced that the first construction is the right one; and several considerations persuade us to this end." See also Pennsylvania Co. v. U. S., (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming* (N. D. Ohio 1915) 237 Fed. 471.

In association with cars "commercially used."—The fact that a car is being hauled for repair in connection with cars in commercial use does not take such movement out of the proviso if otherwise coming within its terms. *Baltimore, etc., R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 420, 155 C. C. A. 196, *following* *Erie R. Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 28, 153 C. C. A. 64.

1912 Supp., p. 337, sec. 5.

Construction.—"Section 5 of the act of 1910 expressly forbids the movement of such defective cars otherwise than within the express limitations of section 4 (*Great Northern R. Co. v. Otos*, [1915] 239 U. S. 349, 36 S. Ct. 124, 60 U. S. (L. ed.) 322). The fact that the cars were hauled in the condition in which they admittedly were shows *prima facie* a violation of the provisions of the sections mentioned. The burden is thus cast upon defendant to show affirmatively that its act is within the proviso of section 4 of the Act of 1910. *Schlemmer v. Buffalo, etc., R. Co.*, [1907] 205 U. S. 1, 10, 27 S. Ct. 407, 51 U. S. (L. ed.) 681, [685]; *U. S. v. Trinity, etc., R. Co.*, (C. C. A. 5th Cir. [1913]), 211 Fed. 448, 453, 128 C. C. A. 120." *Pennsylvania Co. v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 824, 154 C. C. A. 526, *affirming* (*N. D. Ohio* 1915), 237 Fed. 471.

1916 Supp., p. 215, sec. 1.

Headlights.—In a case concerning the validity of a state statute regulating headlights on locomotives used in interstate commerce passed at a time prior to the passage of the Act of March 4, 1915, but after the Act of February 17, 1911, or in other words in 1909, the court said: "So far as the attack upon the Act of 1909 and the order made pursuant to it is based upon interference with interstate commerce, it very properly is conceded that, but for a recent Act of Congress, the case would be controlled by *Atlantic Coast Line R. Co. v. Georgia*, [1914] 234 U. S. 280, 290, [34 S. Ct. 829, 58 U. S. (L. ed.) 1312, 1317], where it was held that in the absence of federal legislation the states are at liberty, in the exercise of their police power, to establish regulations for securing safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce, and that (p. 293) the Safety Appliance Act of Congress, since they provided no regulations for

locomotive headlights, showed no intent to supersede the exercise of state power with respect to this subject. But it is insisted that this decision is no longer controlling, because Congress has since then 'exercised its power as to equipment over the entire locomotive and tender and all parts and appurtenances thereof.' The reference is to the Act of March 4, 1915, c. 169, 38 Stat. 1192, amendatory of the Act of Feb. 17, 1911 [1912 Supp. p. 839], requiring common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, c. 103, 36 Stat. 913. The latter act was among those referred to in the *Georgia* case, and held not to oust the authority of the state because it did not appear either that Congress had acted, or that the Interstate Commerce Commission, under the authority of Congress, had established any regulations concerning headlights.

"The amendment of 1915 extends the provisions respecting inspection, etc., to the entire locomotive and all its appurtenances. Whether those provisions authorize the Interstate Commerce Commission to prescribe any particular type of headlight, or other appliance, is a question upon which we need not now pass." *Vandalia R. Co. v. Public Service Commission*, [1916] 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276, (*affirming* (1914) 182 Ind. 382, 101 N. E. 85)."

"When the amendatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of Feb. 17, 1911 [1912 Supp., p. 339], we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts, and the amendatory act extended the federal authority." *Louisville, etc., R. Co. v. State*, (*Ala. App.* 1917) 76 So. 505.

Prior to this Act of March 4, 1915, a state statute regulating locomotive headlights was not repugnant to any Act of Congress on the subject of safety appliances for railroads as no such Act had attempted to regulate headlights, and in the absence of such regulation by Congress states could in the exercise of their police power legislate on the subject. *Atlantic Coast Line R. Co. v. Georgia*, (1914) 234 U. S. 280, 34 S. Ct. 829, 58 U. S. (L. ed.) 1312, *affirming* (1910) 135 Ga. 545, 69 S. E. 725, 32 L. R. A. (N. S.) 20; *Randall v. Minneapolis, etc., R. Co.*, (1916) 162 Wis. 507, 156 N. W. 629.

RIVERS, HARBORS AND CANALS

Vol. VI, p. 787, sec. 2476.

What are navigable waters.—The fact that Congress passed an Act authorizing the construction of a bridge does not of itself establish the navigability of a stream. *National Surety Co. v. Lincoln County*, (C. C. A. 9th Cir. 1917) 238 Fed. 705, 151 C. C. A. 555, *affirming* (D. C. Mont. 1916) 231 Fed. 468.

Vol. VI, p. 793, sec. 5.

Closing drawbridge for repairs.—Where a railroad closes its drawbridge for the purpose of making necessary repairs, complies with the statutes of a state and performs the work of repair without unreasonable delay, it is not liable for the penalty imposed by this section. The statute is silent as to obstructions caused for the purpose of making necessary repairs and has no application to such a case. *Newark Exp., etc., Co. v. Delaware, etc., R. Co.*, (1916) 89 N. J. L. 494, 98 Atl. 472.

Unusual danger.—The refusal of a railway company to open the draw of its bridge during the Galveston storms of 1915, when, as shown by undisputed evidence, an attempt on the part of those in charge of the bridge to open the draw therein, under the prevailing conditions, would have imperiled the lives of those making such attempt as well as the lives of passengers on the trains using such bridge, who were fleeing from the city to avoid the dangers of the storm, was not a violation of this section. *West v. Galveston, etc., R. Co.*, (Tex. Civ. App. 1917) 196 S. W. 343.

Construction of regulation.—Under this section and the regulations of Aug. 4, 1910, promulgated thereunder, which require a vessel when approaching a draw to sound a prescribed signal "when said vessel shall be at a distance of not less than 1000 feet," such vessel must give the signal when approximately 1000 feet distant. The regulation fixes the minimum distance but prescribes no maximum. "A signal given at a distance of 2 or 3 miles from the bridge would be a literal compliance with the regulations. This however would be an unreasonable construction of the regulation. The right of navigation does not take away the right to cross the river. The two rights co-exist, and each must be exercised with reference to the other. The navigator must yield something to the foot passenger, just as the latter must yield something to the navigator." *The Yucatan*, (C. C. A. 9th Cir. 1915) 226 Fed. 437, 141 C. C. A. 267.

Vol. VI, p. 796, sec. 1.

Constitutionality.—The necessities of commerce required the protection and preservation of the harbor of the chief commercial city of the country, and an Act to protect the waters of the harbor for the purposes of navigation was within the constitutional power of Congress. *Randall v. U. S.*, (C. C. A. 2d Cir. 1901) 107 Fed. 935, 47 C. C. A. 80; *U. S. v. Various Tugs, etc.*, (S. D. N. Y. 1915) 225 Fed. 505.

Single penalty.—The Act imposes a single penalty. While all parties concerned are liable, there is but one wrongful act and but one penalty to be imposed. "Any other construction would frequently lead to a grotesque result. If, for example, there should be several tugs with different owners and masters, the wrongful discharge of his load by a single scowman would cause the amount of the penalty to be determined by the accidental number of owners and masters of tugs rather than by the gravity of the offense of the culpable scowman." *U. S. v. Various Tugs, etc.*, (S. D. N. Y. 1915) 225 Fed. 505.

Vol. VI, p. 798, sec. 3.

Defective machinery.—Defective machinery, which, by the terms of the statute, is no excuse, means machinery unsuited for the purpose or out of repair, and does not refer to a sudden breaking down of properly installed and inspected machinery. *U. S. v. Various Tugs, etc.*, (S. D. N. Y. 1915) 225 Fed. 505.

Vol. VI, p. 805, sec. 9.

Concurrent authority.—*In general.*—This statute is a specific recognition by Congress itself that, notwithstanding its paramount jurisdiction of the means and instrumentalities of interstate commerce, the bridging of navigable waters is likewise one of vital interest to the states and that they also have a governmental concern as to proper bridging of such waterways. The effect of the statute is that the general and exclusive control of interstate commerce vested in Congress is specifically modified in the matter of bridges over navigable streams located in a single state, and concurrent power over such bridges is vested in the state. *Kaw Valley Drainage Dist. v. Missouri Pac. R. Co.*, (1916) 99 Kan. 188, 161 Pac. 937.

Removal of bridge.—So it has been held that a bridge which is an integral part of an interstate railroad highway may be demolished and removed from a

stream by the state if it constitutes such an obstruction as to cause the river to overflow and imperil the lives and inundate the homes of the people residing near by. *Kaw Valley Drainage Dist. v. Missouri Pac. R. Co.*, (1916) 99 Kan. 188, 161 Pac. 937, *distinguishing* *Kansas City Southern R. Co. v. Kaw Valley Drainage Dist.*, (1914) 233 U. S. 75, 34 S. Ct. 564, 58 U. S. (L. ed.) 857, wherein it was held that the destruction of a bridge, necessarily used by an interstate railroad line, could not be justified by the fact that it helped the drainage of a district.

Approval of War Department.—Permission and approval by the federal government for the construction of a bridge is not required before the procedural steps providing for the construction and for the payment of the bridge have been taken. Where the state legislature has authorized the construction of a bridge, it devolves on the state highway commission to obtain the approval of the federal authorities of the location and of the plans of the bridge before construction is commenced. Although this can be done at any time before construction is commenced, it would seem most desirable that such approval be obtained at an early stage of the proceeding, to avoid the taking of any further steps on the part of all interested parties in case such approval is refused. *State v. Stevenson*, (1917) 161 Wis. 569, 161 N. W. 1.

Vol. VI, p. 816, sec. 13.

Refuse matter.—Where a pile driver was engaged in repairing a ferry rack in the Hudson river and some of the piles were longer than required, and thereupon a member of the pile-driving crew cut off their ends and let the discarded pieces float out into the river, it was held that the unwanted ends of the piles were refuse matter, a dangerous menace to navigation and that the action of a member of the crew in permitting them to float off was a violation of this section for which the pile driver was liable. *The Pile Driver No. 2*, (C. C. A. 2d Cir. 1916) 239 Fed. 489, 152 C. C. A. 367.

Depositing refuse on bank of stream.—If the refuse is deposited on the banks of a stream the offense is not complete until it is washed into the river and obstructs navigation. *Myrtle Point Transp. Co. v. Coquille River*, (1917) 86 Ore. 311, 168 Pac. 625.

Vol. VI, p. 817, sec. 15.

Scope and application of section.—The question whether the statute has been violated depends upon the facts of the particular case and each case must be judged by its own circumstances. If a vessel anchors at a point in a channel where, notwithstanding such anchorage, other

vessels navigated with care can safely pass, she does not violate the statute or render herself liable under the general rules of navigation, although she obstructs the channel to a certain extent. On the other hand, if the anchored vessels occupies so much of the channel as to practically impede its navigation or make the effort to pass her a dangerous manoeuvre, she has placed herself in a position which the statute forbids. *Strathleven Steamship Co. v. Baulch*, (C. C. A. 4th Cir. 1917) 244 Fed. 412, 157 C. C. A. 38.

The owner of a sunken vessel is charged with the statutory duty of lighting or marking the place where the vessel sank, and navigators fulfill their duty when they look for lights at night to mark obstructions in the pathway of vessels. *The Wissahickon*, (W. D. N. Y. 1915) 225 Fed. 345.

The statutory requirement that the owner of such sunken craft immediately mark it, is a personal duty which cannot be delegated so as to relieve the owner from responsibility. *The Drill Boat No. 4*, (D. C. Mass. 1916) 233 Fed. 589.

But it has been held that the volunteer conduct of officials of the United States in placing a marking buoy at the request of the owners of a sunken vessel, which was not abandoned, relieves the latter from liability for injury to another vessel due to misplacement of the buoy. In other words, the owner complies with the requirements of the Act when he secures the services of the lighthouse department, and it makes no difference that the government makes a charge for its services. *The Plymouth*, (C. C. A. 2d Cir. 1915) 225 Fed. 483, 140 C. C. A. 1, *reversing* on this point *Lehigh, etc., Coal Co. v. Hartford, etc., Transp. Co.*, (S. D. N. Y. 1914) 220 Fed. 348. There appears to be no previous American authority on this subject. The holding is predicated on the theory that in such case the government acts, not as the private agent of the owner, but in its sovereign capacity, as agent for the whole public; that in such circumstances the owner cannot order the buoy to be withdrawn or change its location, or control the lighthouse department in any way as a principal may control his agent.

Vol. VI, p. 818, sec. 18.

Constitutionality.—This section is not unconstitutional because it fails to make provision for compensation. *Louisville Bridge Co. v. U. S.*, (1917) 242 U. S. 409, 37 S. Ct. 158, 61 U. S. (L. ed.) 395, *affirming* (W. D. Ky. 1916) 233 Fed. 270.

Action for damages—pleading and proof.—In order to recover damages caused through an obstruction to navigation by a bridge across a navigable stream, it is not

necessary for a plaintiff to plead or prove that the Secretary of War has not proceeded under the statute to ascertain that the given bridge is an unreasonable obstruction to free navigation. *Clew v. Pennsylvania R. Co.*, (1916) 89 N. J. L. 171, 98 Atl. 319.

Compensation for alteration.—The government can enforce the provisions of this section authorizing the Secretary of War to require alterations in bridges, when such changes are demanded in the interest of navigation, without making compensation. *Louisville Bridge Co. v. U. S.*, (1917) 242 U. S. 409, 37 S. Ct. 158, 61 U. S. (L. ed.) 395, *affirming* (W. D. Ky. 1916) 233 Fed. 270, and *overruling* U. S. v. Parkersburg Branch R. Co., (N. D. W. Va. 1905) 134 Fed. 969, (C. C. A. 4th Cir. 1906) 143 Fed. 224, 74 C. C. A. 354, and *distinguishing* *Monongahela Nav. Co. v. U. S.*, (1893) 148 U. S. 312, 13 S. Ct. 622, 37 U. S. (L. ed.) 463; *U. S. v. Baltimore, etc., R. Co.*, (1913) 229 U. S. 244, 33 S. Ct. 850, 57 U. S. (L. ed.) 1169.

1909 Supp., p. 600, sec. 1.

Navigable waters.—The fact that Congress passed an Act authorizing the construction of a bridge does not of itself establish the navigability of the stream. *National Surety Co. v. Lincoln County*, (C. C. A. 9th Cir. 1917) 238 Fed. 705, 151 C. C. A. 555, *affirming* (D. C. Mont. 1916) 231 Fed. 468.

1909 Supp., p. 601, sec. 4.

Presumption of negligence.—Upon receiving or being reasonably chargeable with notice of the approach of a vessel, failure either promptly to open the draw or the lift of a bridge maintained across a navigable river, or if the facts justify seasonably to notify the approaching vessel that failure to open or delay in doing so is unavoidable, raises a presumption of negligence which the owner or operator of the bridge must overcome. *Great Lakes Towing Co. v. Masoba Steamship Co.*, (C. C. A. 6th Cir. 1916) 237 Fed. 577, 150 C. C. A. 459.

1912 Supp., p. 347, sec. 3.

Liability for flowage.—The statute recognizes the fact that damage to private property may ensue from an authorized dam and preserves liability therefor. *Erickson v. Minnesota, etc., Power Co.* (1916) 134 Minn. 209, 158 N. W. 979.

1912 Supp., p. 378, sec. 11.

Ownership by railroad in any common carrier by water.—**Extension of time.**—A court of equity is without jurisdiction to enjoin the enforcement of an order of the Interstate Commerce Commission refusing, on the ground of real or possible

competition, to grant an extension of time for compliance with the provisions of the second paragraph of this section, which prohibited after July 1, 1914, any ownership by a railroad in any common carrier by water when the railroad might compete for traffic with the water carrier, and empowered the Commission to determine questions of fact as to such competition, and to extend the time if the extension would not exclude or reduce competition on the water route, since the order or the Commission was negative in substance as well as form, and the risk to which the railway company was left subject did not come from the order, but from the statute. *Lehigh Valley R. Co. v. U. S.*, (1917) 243 U. S. 412, 37 S. Ct. 397, 61 U. S. (L. ed.) 819, *affirming* (E. D. Pa. 1916) 234 Fed. 682.

1914 Supp., p. 377, sec. 9.

Mode of review.—In *Panama R. Co. v. Beckford*, (C. C. A. 5th Cir. 1916) 231 Fed. 436, 145 C. C. A. 430, which was in error to and appeal from the District Court of the Canal Zone, the court, in affirming judgment on writ of error and dismissing the appeal, said: "Under this section it is clear that the jurisdiction of the Circuit Court of Appeals is to be exercised in the same manner and under the same regulations and by the same procedure, as nearly as practicable, as is done in reviewing the final judgments and decrees of the District Courts of the United States. In the procedure of the Circuit Court of Appeals in reviewing final judgments and decrees of the District Courts, the distinction between cases at law and cases in equity is fully recognized and it is well settled that cases at law can only be reviewed on writs of error, and cases in equity on an appeal."

Jurisdiction on appeal.—**Amount in controversy.**—In an action in the District Court of the United States for the Canal Zone, the amount sued for was over \$14,000. The verdict of the jury in favor of the plaintiff was \$930.60. The defendant made a counterclaim of \$421.95 which apparently was not passed upon by the jury. The record showed that the plaintiff in error submitted in the court below an affidavit that "the amount in controversy in said cause is in excess of \$1,000." On motion to dismiss it was held that the amount involved was sufficient to give the Circuit Court of Appeals jurisdiction. *Pacific Mail Steamship Co. v. Balderach*, (C. C. A. 5th Cir. 1916) 229 Fed. 562, 144 C. C. A. 22.

Criminal cause.—**Contempt of court.**—In *Smith v. Government of Canal Zone*, (C. C. A. 5th Cir. 1917) 239 Fed. 133, the record showed that petitioner and appellant was tried and convicted in the District Court of the Canal Zone for con-

tempt of court and sentenced to the payment of a fine of \$25. He thereupon sued out a writ of error assigning as errors the denial of the right of a trial by jury and that under the proceedings he was deprived of due process of law. The court in granting the appellee's motion to dismiss the writ of error on the ground that the Circuit Court of Appeals was without jurisdiction to review said: "It is conceded that the case sought to be reviewed is a criminal cause. Our jurisdiction to review cases from the District Court of the Canal Zone is to be found in an 'Act to provide for the opening, maintenance and protection and operation of the Panama Canal, and the sanitation and government of the Canal Zone, approved August 24, 1912,' 37 Stat. 560. By the

ninth section of that act jurisdiction is given to this court to review, revise, modify, reverse or affirm final judgments or decrees of the District Court of the Canal Zone, and to render such judgment as in the opinion of the court should have been rendered by the trial court, only where (a) the Constitution, or any statute, treaty, title, right or privilege of the United States is involved and a right thereunder is denied; or (b) in cases in which the value in controversy exceeds \$1,000; or (c) in criminal cases wherein the offense charged is punishable as a felony. Certainly, this is not a case in which the value in controversy exceeds \$1,000, nor it is a criminal case wherein the offense charged is punishable as a felony."

SALVAGE

1914 Supp., p. 384, sec. 1.

Salvage service defined.—A salvage service is a service which is voluntarily rendered to a vessel in need of assistance and is designed to relieve her from distress or danger either present or to be reasonably apprehended. *The Neshaming*, (C. C. A. 3d Cir. 1915) 228 Fed. 285, 142 C. C. A. 577.

The elements to be considered in a case of salvage are the danger to the ship,

actual or apprehended, the degree of danger from which the property was rescued, the labor expended and the promptitude, energy and skill displayed by the salvors in saving the property, the volume of the property they employed in the service and the risks and danger to which it was exposed. *The Neshaming*, (C. C. A. 3d Cir. 1915) 228 Fed. 285, 142 C. C. A. 577, following *The Pleasure Bay*, (S. D. Ala. 1915) 226 Fed. 55.

SEAMEN

Vol. VI, p. 853, sec. 4511.

Construction.—The legislation embraced in these sections, designed for the amelioration of American maritime commerce, providing as it does for the avoidance of shipping articles and for penalties for its neglect, must be strictly construed. *The Elswick Tower*, (S. D. Ga. 1917) 241 Fed. 706.

American vessels.—These sections apply only to American vessels, and do not apply to foreign seamen who, in a port in the United States, sign articles before a British consul for service on a British vessel. *The Elswick Tower*, (S. D. Ga. 1917) 241 Fed. 706.

Vol. VI, p. 865, sec. 4528.

"Seamen" does not include a deckhand on a barge whose duty it is to clean and load the same and who is employed under an ordinary contract of hiring. *The J. P. Schuh*, (S. D. Ala. 1915) 223 Fed. 455.

Vol. VI, p. 866, sec. 4529.

Sufficient cause—Claim of offset.—A claim of offset for articles intrusted to a seaman as chief steward when he shipped, and not accounted for by him at the end of the trip, with no proof of negligence on his part, does not furnish the sufficient cause required by this section to relieve for the penalties therein provided. *Schmidt v. Pacific Mail Steamship Co.*, (N. D. Cal. 1913) 209 Fed. 264, decree affirmed (1916) 241 U. S. 245, 36 S. Ct. 581, 60 U. S. (L. ed.) 982, which reversed (C. C. A. 9th Cir. 1914) 214 Fed. 513, 130 C. C. A. 657, which reversed the decree of the District Court.

Appeal to Court of Appeals.—The penalty imposed by this section is not incurred during the delay caused by a reasonable attempt to secure a revision of doubtful questions of law and fact in a federal Court of Appeals. *Pacific Mail Steamship Co. v. Schmidt*, (1916) 241 U.

S. 245, 36 S. Ct. 581, 60 U. S. (L. ed.) 982, *reversing* (C. C. A. 9th Cir. 1914) 214 Fed. 513, 130 C. C. A. 657, *affirming* (N. D. Cal. 1913) 209 Fed. 264.

Penalty remitted.—It has been uniformly held that the penalty will not be imposed in any case where there is a fair ground of dispute, and if imposed nevertheless, will be remitted. *Pacific Mail Steamship Co. v. Schmidt*, (C. C. A. 9th Cir. 1914) 214 Fed. 513, 130 C. C. A. 657, *reserved* on other grounds (1916) 241 U. S. 245, 36 S. Ct. 581, 60 U. S. (L. ed.) 982.

Vol. VI, p. 867, sec. 4530.

Purpose of statute.—Congress in the passage of this statute intended that the master of the ship should at all times have in his hands to the credit of the seaman a sum equal to that which has been paid to him out of the wages earned until the end of the voyage. *The Jacob N. Haskell*, (N. D. Fla. 1916) 235 Fed. 914.

Construction.—The *La Follette* Act, amending this section, "has a general police and remedial purpose, which makes a strong appeal for a liberal construction in advancement of the ends in view." *The London*, (E. D. Pa. 1917) 238 Fed. 645, *appeal dismissed* (C. C. A. 3d Cir. 1917) 241 Fed. 863, 154 C. C. A. 565.

Right to one-half wages.—*Generally.*—This Act gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers cargo, one-half of such wages as the seaman shall, at the time of such demand, have earned. He cannot demand any wages until at least five days' services have been rendered, and he cannot thereafter demand the half part of such wages as may be subsequently earned until five days have elapsed from the last or prior payment of one-half of his wages. *The Talus*, (S. D. Ala. 1917) 242 Fed. 955.

Necessity of demand.—This section expressly requires that there shall be a demand made upon the master for the partial payment provided for in order to put the latter or his vessel in default and release the seaman from his contract. *In re Ivertsen*, (N. D. Cal. 1916) 237 Fed. 498.

Time of demand.—In *The Strathearn*, (N. D. Fla. 1917) 239 Fed. 583, it was held that no demand could be made for payment under this section until at least five days after the vessel had put into port. However, in *The Talus*, (S. D. Ala. 1917) 242 Fed. 954, this holding was disapproved, the court saying: "I do not think that the vessel must be in port five days before the seaman can make his demand provided there has been five days or more of service by the sailor since he signed. I think the words 'Provided, such

demand shall not be made before the expiration of, nor oftener than once in, five days,' mean shall not be made before the expiration of five days' service, during which wages were earned, and not oftener than once in each five days thereafter."

Amount.—The real intent of this section is that, deducting previous advances, the seaman shall be entitled to receive one-half the balance of any wages earned and remaining unpaid at the date of demand. *In re Ivertsen*, (N. D. Cal. 1916) 237 Fed. 498; *The London*, (E. D. Pa. 1917) 238 Fed. 645, *appeal dismissed* (C. C. A. 3d Cir. 1917) 241 Fed. 863, 154 C. C. A. 565; *The Clematis*, (E. D. N. Y. 1917) 244 Fed. 484; *The Delagoa*, (E. D. N. Y. 1917) 244 Fed. 835.

Under this section a seaman is not entitled to one-half of his wages earned since a previous payment, where it appeared that such previous payment exceeded one-half of the wages already earned by him. *The Meteor*, (S. D. Ala. 1917) 241 Fed. 735.

Under this section as amended, where a vessel remains in port five days after the seamen have demanded and received one payment, they are entitled to demand and receive a second payment, which should be only one-half the wages earned since the last payment. *The Jacob N. Haskell*, (N. D. Fla. 1916) 235 Fed. 914.

Effect of advances.—In view of the Act of June 26, 1884, ch. 121, § 10(a), which absolutely prohibits advance payments of wages to seamen, payments so made cannot be considered in determining the one-half of a seaman's wages due him under this section, even though they were made in a foreign country where they were not unlawful. *The Imberhorne*, (S. D. Ala. 1917) 240 Fed. 830.

Foreign seamen.—The rights of a seaman in this country are controlled by the Act amending this section, and not by the flag of the vessel on which he is serving. *The Ixion*, (W. D. Wash. 1916) 237 Fed. 142; *The Talus*, (S. D. Ala. 1917) 242 Fed. 954; *The Imberhorne*, (S. D. Ala. 1917) 240 Fed. 830.

Since by express provision this section applies to seamen engaged on foreign vessels while in ports of the United States, a libel showing that a foreign seaman had earned wages while in a port of the United States, that demand was made in accordance with this section, and payment refused, states a cause of action. *The Ixion*, (W. D. Wash. 1916) 237 Fed. 142.

Vol. VI, p. 878, sec. 4543.

Expenses of shipping commissioner.—Under this section the court is authorized to allow expenses to shipping commissioners for attending to the effects of deceased seamen, notwithstanding R. S. sec. 4545. *U. S. v. Grant*, (D. C. Mass. 1914) 224 Fed. 644.

Vol. VI, p. 893, sec. 4568.

Construction.—This section is clearly mandatory and is designed to secure for each seaman a timely and suitable quantity, quality and variety of food for the service for which he has been employed. *Nelson v. Patsel*, (C. C. A. 9th Cir. 1916) 232 Fed. 682, 146 C. C. A. 608.

Shortage of single articles.—The allowance to which seamen are entitled for a reduction of the provisions mentioned in the scale from the quantities provided, attaches to each article of food required and not to an aggregate reduction. *Nelson v. Patsel*, (C. C. A. 9th Cir. 1916) 232 Fed. 682, 146 C. C. A. 608.

It is only on some one of the grounds contained in this section that a shipowner can be relieved from liability for failing to provide provisions in accordance with the shipping articles and R. S. sec. 4612, vol. 6, p. 930. *Nelson v. Patsel*, (C. C. A. 9th Cir. 1916) 232 Fed. 682, 146 C. C. A. 608.

A provision in shipping articles that the crew are to be furnished provisions in accordance with R. S. sec. 4612, vol. 6, p. 930, is valid and enforceable, and for a violation thereof the seamen are entitled to recover under this section. *Nelson v. Patsel*, (C. C. A. 9th Cir. 1916) 232 Fed. 682, 146 C. C. A. 608.

Vol. VI, p. 915, sec. 4599.

The repeal of these sections indicates plainly the intent of the federal government to control the subject and to prevent the arrest and imprisonment of deserting seamen on foreign owned vessels. *Eæ p. Larsen*, (E. D. Va. 1916) 233 Fed. 708.

1916 Supp., p. 231, sec. 9.

Joinder of parties.—The word "or" in the last sentence of this section relating to the liability of the "master or vessel or the owner" is to be construed to mean "and," and in a suit for damages for injuries a seaman may join all the parties, the master, the vessel and the owner. *The Blakeley*, (W. D. Wash. 1916) 234 Fed. 959.

1916 Supp., p. 231, sec. 10.

Advances in domestic ports.—The intent of Congress was that no advancements could be made upon wages earned on foreign vessels while in the harbors of the United States or within the jurisdiction of the waters of the United States. *The Ixion*, (W. D. Wash. 1916) 237 Fed. 142.

Advances in foreign port.—In *The Rhine*, (E. D. N. Y. 1917) 244 Fed. 833, it was held that this section applied to advances made by an American vessel while in a foreign port, the court reviewed and refused to follow the contrary decision rendered in *The State of Maine*, (S. D. N. Y. 1884) 22 Fed. 734.

1916 Supp., p. 233, sec. 12.

Application.—*Coastwise voyages.*—Subsequent legislation excludes seamen engaged in coastwise trade from the exemption contained in this section. *Inter-Island Steam Nav. Co. v. Byrne*, (1915) 239 U. S. 459, 36 S. Ct. 132, 60 U. S. (L. ed.) 382, affirming (1914) 22 Hawaii 160.

1916 Supp., p. 251, sec. 20.

Effect on measure of damages.—By virtue of the inherent nature of a seaman's contract, it is quite immaterial whether the master and seaman are fellow servants in the case of a suit for injuries resulting from an improvident order of the master, for the measure of recovery is only wages to the end of the voyage and the expenses of maintenance and care for a reasonable time, regardless of the question of contributory negligence, and this rule is not affected by the text section. *Chelentis v. Luckenbach Steamship Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 536, 156 C. C. A. 234.

"Seaman having command."—Where it appeared that the work of lashing a deck load of lumber was directed by the boatswain, who made an improper adjustment, whereby the seaman who was lashing the lumber was injured, it was held that he was a "seaman having command" within the meaning of this section. *The Colusa*, (N. D. Cal. 1917) 241 Fed. 968.

SHIPPING AND NAVIGATION

Vol. VII, p. 21, R. S. 4153.

State laws imposing charges for wharves, etc., based on tonnage.—"It is not here open to question, and it is not questioned, that, in the absence of inconsistent congressional action on the subject, it is competent for the local authorities to impose reasonable charges for the use

by vessels of wharves and other facilities furnished. . . . And . . . the mode of rating such charges made, whether according to the size or capacity of the vessel, or otherwise, is a matter for the determination of the local authorities. It is not a valid ground of objection to such charges that they are to be computed with refer-

ence to the vessel's gross tonnage, and not upon its net tonnage, which is made the subject of the United States tonnage duties." The *Cestrian*, (C. C. A. 5th Cir. 1917) 240 Fed. 929, 153 C. C. A. 615.

1912 Supp., p. 352, sec. 1.

Purpose and scope.—"Obviously the act was passed in restriction of the rights of vessel owners and in the aid of those who furnish repairs, supplies, and other necessities. It wiped out all difference between foreign and domestic vessels, and between repairs, supplies, and other necessities furnished in the home port, as distinguished from those furnished in foreign ports; and between such as were ordered by the master and such as were ordered by the owners. It created a presumption of law of the vessel's liability for all repairs, supplies, and other necessities ordered by the master, managing owner, ship's husband, charterer, any person to whom the management of the vessel is intrusted at the port of supply, owner pro hac vice, and conditional vendee." The *Oceana*, (C. C. A. 2d Cir. 1917) 244 Fed. 80, 156 C. C. A. 508. See to the same effect, The *Oceana*, (E. D. N. Y. 1916) 233 Fed. 139.

"Being relieved of the necessity of proving credit to the vessel and being clothed with the presumption of the validity of the order, the libellant, upon proving delivery to the vessel, enters court with a prima facie right to a maritime lien." The *Yankee*, (C. C. A. 3d Cir. 1916) 233 Fed. 919, 147 C. C. A. 593.

A maritime lien is a *jus in re*, and, as it may operate to the prejudice of general creditors, it will not be extended by analogy or by inference. The *Cora P. White*, (D. C. N. J. 1917) 243 Fed. 246.

"Marine railway."—"Whatever may have been the rule prior to Act June 23, 1910 [this Act], in reference to the use of marine railways, as that act gives a maritime lien to one who furnishes a dry dock or marine railway for the repair of a vessel, I am of the opinion that a contract regarding the use of such dock or railway for such repairs is a contract cognizable in the admiralty." The *Alliance*, (N. D. Cal. 1916) 236 Fed. 361.

Lien confined to particular vessel furnished.—This section gives no authority for the creation of a maritime lien on vessels to which supplies were not to be furnished. And an agreement that certain vessels should be charged with a lien for coal furnished to other vessels can have no effect to create a maritime lien which shall take precedence of an existing mortgage. The *William B. Murray*, (D. C. R. I. 1917) 240 Fed. 147.

"A supply man who furnished supplies ready for any vessel of a fleet that may call for it should not be deprived of the same right to a lien as a supply man who

is told the name of the vessel which is to require the supplies. The appropriation of the coal to a particular vessel, though made by the owner, yet if done in pursuance of the course of business contemplated by the parties, must be regarded as completing a 'furnishing' by the libellant to 'a vessel,' which is identified by the act of the owner in placing the coal aboard." The *William B. Murray*, (D. C. R. I. 1917) 240 Fed. 147.

What constitutes delivery to vessel.—"A materialman may make actual delivery of supplies to a vessel in the maritime sense, by causing them to be transported by rail and water carriers by interrupted stages from their point of origin to the vessel side, when the transaction is begun by a valid order indicating that the supplies are for the vessel and are to be delivered to her, and is completed by an actual delivery to the vessel consistent with the instructions of the order and the intentions of the parties giving and accepting it." The *Yankee*, (C. C. A. 3d Cir. 1916) 233 Fed. 919, 147 C. C. A. 593, *explaining and distinguishing* *Vigilancia*, (S. D. N. Y. 1893) 58 Fed. 698, and *Cimbria*, (D. C. Mass. 1907) 156 Fed. 378.

On sole credit of vendee.—"By this act, when the supplies are furnished to the vessel on the order of the owner or his authorized agent, . . . a prima facie lien is given. When, however, as in the instant case, the evidence discloses that no vessel was mentioned in the ordering, shipping, or billing of the goods; that they did not reach the libeled vessel as a part of the transportation begun by the vendor; that the circumstances attending said furnishing in no respect differed from the course of dealing between these libellants and the Fertilizer Company carried on for many years; that the said company was carrying on a business in which vessels were but one kind or class of instrumentalities used in its promotion; that at no time was a vessel named as the recipient of said supplies by either said company or the shipper, and that the vendor had theretofore always looked to that company for payment—the furnishing of the supplies embraced in these libels must be held to be common-law sales and deliveries, made on the sole credit of the vendor, and not maritime contracts, for which a lien is given by the act of 1910." The *Cora P. White*, (D. C. N. J. 1917) 243 Fed. 246.

Facts not showing want of jurisdiction.—Where a libel is filed in the District Court claiming a lien for repairs to a vessel and the court decides that the alleged "repairs" were really new construction, its decision is not one that it had no jurisdiction of the case but goes to the merits, and not only has it power to award costs but an appeal should be to

the Circuit Court of Appeals and not to the Supreme Court. *Hazelwood Dock Co. v. Palmer*, (C. C. A. 3d Cir. 1915) 228 Fed. 325, 142 C. C. A. 617.

1912 Supp., p. 353, sec. 2.

Intrusted with management.—"The word 'management' is used in the Act in its primary sense of physical or manual control. Congress intended to make the basis of the presumptive authority from the owner such visible control in some authorized person as would probably influence materialmen to the opinion that they were dealing with one having authority over the vessel." *The Oceana*, (E. D. N. Y. 1916) 233 Fed. 139. In this case it was held that the vendee of a vessel was intrusted with its management although in accordance with the agreement of sale the bill was deposited in escrow to be delivered only upon the performance by the vendee of certain of the covenants in the agreement. Supplies, etc., were furnished on the order of the vendee, and subsequently the vessel was retaken by the vendor for failure of the vendee to perform the said covenants, there having been in consequence no delivery of the bill of sale. It was held that a lien was created.

1912 Supp., p. 353, sec. 3.

Agent of agreed purchaser of ship.—"It is clear, . . . , that under the Act any person to whom an owner intrusts the management of his ship may create liens, but that an agreed purchaser of a ship can only appoint such an agent when he is in possession of the ship. Where there is nothing to limit the term, possession may be either actual or constructive; and I incline to the opinion that it is so employed in this Act. From this point of view, and with respect to the matter of supplies and equipment here involved, it would be quite in accord with the evidence to regard the vessel as having been legally in the possession of the vendee from the date of the first payment on the purchase price. That is, possession might well be construed to mean the intended right to enjoy the property." *The Oceana*, (E. D. N. Y. 1916) 233 Fed. 139.

Proviso — Generally.—"This proviso is nothing more than a statutory declaration of a principle long recognized in maritime jurisprudence and repeatedly announced by the Supreme Court of the United States. *The Kate*, [1896] 164 U. S. 458, 17 S. Ct. 135, 41 U. S. (L. ed.) 512; *The Valencia*, [1897] 165 U. S. 264, 17 S. Ct. 323, 41 U. S. (L. ed.) 710. It is in effect that no lien shall be afforded and no presumption given in aid of a materialman who furnishes supplies under circumstances which put him on inquiry as to the authority of the one giving the

order to bind the vessel. That is, no one with knowledge that supplies are ordered by one without authority to pledge the vessel, or no one awake to circumstances which suggest inquiry as to that authority, may shut his eyes to what he sees or to what he could see by looking, and avail himself of the remedies or the presumptions of the law." *The Yankee*, (C. C. A. 3d Cir. 1916) 233 Fed. 919, 147 C. C. A. 593.

"The act does not mean that the furnisher shall not have the right to rely upon the authority to bind the vessel presumed to exist in the officers and agents specified in the second section. It is only when he knows that such officers or agents do not have the requisite authority, or under the circumstances is put upon inquiry as to their powers, that the presumption becomes inoperative." *The Oceana*, (E. D. N. Y. 1916) 233 Fed. 139.

In *The South Coast*, (N. D. Cal. 1916) 233 Fed. 327, it was held that the furnisher of supplies to a vessel on the order of the charterer was entitled to a lien as there was nothing in the provisions of the charter depriving the charterer of authority to bind the vessel.

"There was, of course, no constructive notice by virtue of the filing of the contract of conditional sale in conformity with the state statute. The act of June 23, 1910, expressly supersedes state statutes conferring liens on vessels, and under Rev. St. § 4192 [vol. 7, p. 42], there is no constructive notice to anybody unless the bill of sale of conveyance is recorded in the office of the collector of the customs where such vessel is registered or enrolled. Since this conveyance was not so recorded, we have to deal, under the proviso of the third section of the act, not with constructive but with actual knowledge on the part of lienors, or the actual bringing to their attention of some circumstances that would naturally put them upon inquiry." *The Oceana*, (E. D. N. Y. 1916) 233 Fed. 139.

Due diligence is mainly a question of fact depending on the particular circumstances of each case. *The Louis Dolive*, (E. D. La. 1916) 236 Fed. 279; *The Malola*, (W. D. Wash. 1914) 214 Fed. 308.

Mistaken belief by a person furnishing repairs to a vessel at the request of charterers that he had a right to look to the vessel for the payment of the bill is not sufficient to give him a lien when reasonable diligence would have enabled him to learn that the charterer was without authority to pledge the vessel. *The Sylvan Glen*, (E. D. Pa. 1917) 241 Fed. 731.

Vessel being sailed on "lay."—In *The Francis J. O'Hara, Jr.*, (D. C. Mass. 1915) 229 Fed. 312, it was held that the furnisher of salt to a fishing schooner being sailed on "one-quarter lay," under

which the master and crew and not the vessel was liable for it, was not entitled to a lien.

1912 Supp., p. 353, sec. 4.

Giving credit to owner.—A defense that the lien has been waived to be successful must be supported by satisfactory and definite proof and such proof is not furnished by evidence that bills were made out and charges made to owners or that notes were given. *The William B. Murray*, (D. C. R. I. 1917) 240 Fed. 147.

"The terms of the mortgage in this case do not indicate an intention to waive the lien. Nothing whatever is said about the maritime lien, but the credit is only for four months, well within the term of prescription of the lien under the local law, which the parties probably had in mind when the mortgage was executed, and the Act provides for the instant maturity of the note in the event of a libel being filed against the boat. Such testimony as is in the record tends to show that the supplies and repairs were furnished on the credit of the vessel, and there is nothing to indicate that the lien was waived. It is insisted, however, that the claim cannot be allowed because the note has not been surrendered. In several cases the Supreme Court has adverted to the fact that the note has, or has not, been surrendered, and more or less significance attached to the fact,

but, so far as I am advised, the question has never been fully discussed by that court. However, in the case of *The Theodore Perry*, *supra*, Mr. Justice Brown, when on the district bench, held that the objection was personal to the maker of the note. This is in accord with sound reason, and is consistent with the decision of the Supreme Court in the case of *The Kalorama*, [1870] 10 Wall. at page [204], 218, 19 U. S. (L. ed.) [941], 945, wherein it was held that the pendency of a common-law action against the owner did not prevent the assertion of the lien against the ship." *The Fairhope*, (E. D. La. 1916) 235 Fed. 1007.

Insurance money.—Where a vessel burned and the owner got insurance money it was held that libelants were at liberty by reason of this section and Admiralty Rules 12 and 13, to proceed against the owner in personam. *Henslee v. West Kentucky Coal Co.*, (C. C. A. 6th Cir. 1917) 241 Fed. 609, 154 C. C. A. 367.

1912 Supp., p. 353, sec. 5.

Scope of section in general.—State laws.—This statute supersedes all state laws regarding maritime liens and controls all cases whether relating to foreign or domestic vessels. *The Ha Ha*, (S. D. Ala. 1912) 195 Fed. 1013; *Stephens v. Weyl-Zuckerman*, (1917) 34 Cal. App. 219, 167 Pac. 171.

STEAM VESSELS

Vol. X, p. 398, sec. 4499.

Departing from port without a licensed mate in violation of R. S. sec. 4463, as amended by Act of April 2, 1908, 1909 Supp., p. 653, was held to make the owner liable under this section notwithstanding that the libel of information did not point out the particular section of the statute under which the penalty sought in the libel was claimed. *U. S. v. Independent Packet Co.*, (C. C. A. 8th Cir. 1915) 226 Fed. 721, 141 C. C. A. 477, *affirmed* (C. C. A. 8th Cir. 1915) 228 Fed. 673, 143 C. C. A. 195.

Sufficiency of evidence.—In *The Seneca*, (C. C. A. 3d Cir. 1916) 234 Fed. 312, 148 C. C. A. 214, it was held that the evidence was insufficient to establish that *The Seneca* violated the statute by carrying an excess of passengers.

1909 Supp., p. 655, sec. 14.

A tug with a tow of barges was held in fault for collision with a schooner, because the length of the hawsers upon

which the barges were being towed at the time far exceeded that which was permitted by the department regulations established under authority of this section. *The Piedmont* (C. C. A. 1st Cir. 1917) 242 Fed. 385, 155 C. C. A. 161. To the same point in other collision cases see *The Triton*, (S. D. N. Y. 1917) 246 Fed. 318; *The Teaser*, (C. C. A. 3d Cir. 1917) 246 Fed. 219, 158 C. C. A. 379.

Liability of tug violating statute to third vessel damaged by tow.—Where a tug at the request of a vessel in tow lengthened the hawser beyond the length made lawful by regulation promulgated by the Secretary of Commerce and Labor pursuant to this section, and the tow thereafter collided with a third vessel, it was held that the tug, in consequence of the violation of the section, was liable along with the tow, which was insufficiently manned, for damages sustained by the third vessel, which was not in fault, but that it was not liable for damages sustained by the tow. *The Tearer*, (E. D. Penn. 1915) 229 Fed. 476.

SURETY COMPANIES

Vol. VII, p. 200, sec. 1.

"Power to guarantee" required by this section is not the same thing as "authority under its charter" referred to in section 3. The existence of the former should be determined by the laws in force at the place of contract. *Fidelity, etc., Co. v. Pennsylvania*, (1916) 240 U. S. 319, 36 S. Ct. 298, 60 U. S. (L. ed.) 664.

State power to license and tax surety companies.—The Act of 1894 does not undertake to endow any corporation with power, but only to permit those complying with specified conditions to exercise their lawful powers, derived from other

sources, by contracting with the government under official approval. Neither circumstances nor language of the Act indicate design or necessity to limit application by the several states of a well established system of licensing and taxing bonding companies not incorporated under their own statutes. The right to carry on business in a state depends upon a compliance with its laws. *Fidelity, etc., Co. v. Pennsylvania*, (1916) 240 U. S. 319, 36 S. Ct. 298, 60 U. S. (L. ed.) 664, *affirming* (1914) 244 Pa. St. 67, 90 Atl. 437.

TELEGRAPH, TELEPHONE, CABLE AND ELECTRIC LINES

Vol. VII, p. 205, sec. 5263.

Franchise tax.—In *Western Union Tel. Co. v. Houston*, (Tex. Civ. App. 1917) 192 S. W. 577, it was said that "the levy of a tax upon the value of a franchise in the public street and grounds of a municipi-

ality granted to a telegraph company must be held to be a property tax and not a license or privilege tax upon the right of the company to conduct its business in the municipality."

TERRITORIES

Vol. VII, p. 254, sec. 1851.

Legislative powers—*Generally.*—As an organized political division, a territory possesses only the powers which Congress has conferred. *Christianson v. King County*, (1915) 239 U. S. 356, 36 S. Ct. 114, 60 U. S. (L. ed.) 327.

Escheat.—Where a territory is given statutory powers to legislate on all rightful subjects of legislation, it may enact provisions for escheat for failure of heirs. *Christianson v. King County*, (1915) 239 U. S. 356, 36 S. Ct. 114, 60 U. S. (L. ed.) 327.

Vol. VII, p. 267, sec. 4.

School district.—Under the provisions of this section a school district of a territory cannot become indebted in any manner or for any purpose to any amount which in the aggregate, including existing indebtedness, exceeds four per centum of the value of the taxable property within such school district, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and any contract entered into by its officers in violation of this section is void. *Caddo County School Dist. No. 89 v. Van Arsdale*, (Okla. 1917) 162 Pac. 741.

TIMBER LANDS AND FOREST RESERVES

Vol. VII, p. 301, sec. 2.

Purchase on speculation.—The language of the statute negatives the conclusion that it confers the right to buy the kind of public land it specifies on one who, when he makes his application, has the purpose of acquiring the land on speculation, and with no intention of appropriating it to his own exclusive benefit. *Taylor v. U. S.*, (C. C. A. 5th Cir. 1916) 231 Fed. 938, 146 C. C. A. 134.

Rights of bona fide purchasers.—In a suit to recover the value of land patented by the United States under this Act the court said: "It was always held that no action would lie by the United States against bona fide purchasers from a patentee for value without notice of the

fraud." *U. S. v. Kolenos*, (C. C. A. 8th Cir. 1915) 226 Fed. 180, 141 C. C. A. 178.

Vol. VII, p. 314. [*Rights of settlers.*]

Title to the base lands does not pass to the United States until the deed is accepted by the general land office. *State v. Hyde*, (Ore. 1918) 169 Pac. 757.

Vol. X, p. 405, sec. 4.

"While such rules and regulations could not defeat the grant, they obviously could operate to execute and condition it." *Utah Power, etc., Co. v. U. S.*, (C. C. A. 8th Cir. 1915) 230 Fed. 328, 144 C. C. A. 470.

TRADEMARKS

Vol. X, p. 408, sec. 1.

Character of property in.—Common-law trademarks and the right to their exclusive use are of course to be classed among property rights, but only in the sense that a man's rights to the continued enjoyment of his trade reputation and the good-will that flows from it, free from unwarranted interference by others, is a property right, for the protection of which a trademark is an instrumentality. The right grows out of use, not mere adoption. *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, *affirming* (C. C. A. 7th Cir. 1913) 208 Fed. 513, 125 C. C. A. 515, L. R. A. 1916D 136.

Territorial extent of trademark rights.—That property in a trademark is not limited in its enjoyment by territorial bounds, but may be asserted and protected wherever the law affords a remedy for wrongs is true in a limited sense. Into whatever markets the use of a trademark has extended, or its meaning has become known, there will the manufacturer or trader whose trade is pirated by an infringing use be entitled to protection and redress. But this is not to say that the proprietor of a trademark, good in the markets where it has been employed, can monopolize markets that his trade has never reached and where the mark signifies not his goods but those of another. *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, *reversing* (C. C. A. 5th

Cir. 1913) 204 Fed. 211, 122 C. C. A. 483, and *affirming* on certiorari (C. C. A. 7th Cir. 1913) 208 Fed. 513, 125 C. C. A. 515, L. R. A. 1916D 136.

Vol. X, p. 753, sec. 5.

A mere numeral must be combined with some other device, design or symbol in order to make it a vital part of a trademark. Thus where the number "108" was used as the trade name of a brand of cigars, it was held that there was no possibility of a dealer being deceived in the use of "208" by a rival manufacturer when the labels and boxes were unlike and there was a dissimilarity in general appearance, and that an action for infringement of such alleged trademark would not lie. *Goldsmith Silver Co. v. Savage*, (D. C. Me. 1914) 211 Fed. 751, *affirmed* (C. C. A. 1st Cir. 1916) 229 Fed. 623, 144 C. C. A. 33.

Vol. X, p. 780, sec. 16.

Nature of redress.—The redress that is accorded in trademark cases is based upon the party's right to be protected in the good will of a trade or business. Where a party has been in the habit of labeling his goods with a distinctive mark, so that purchasers recognize goods thus marked as being of his production, others are debarred from applying the same mark to goods of the same description, because to do so would in effect represent their goods to be of his production and would tend to

deprive him of the profit he might make through the sale of the goods which the purchaser intended to buy. Courts afford redress or relief upon the ground that a party has a valuable interest in the goodwill of his trade or business, and in the trademarks adopted to maintain and extend it. The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another. *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, *affirming* (C. C. A. 7th Cir. 1913) 208 Fed. 513, 125 C. C. A. 515, L. R. A. 1916D 136.

Priority of appropriation.—In the ordinary case of parties competing under the same mark in the same market, it is correct to say that prior appropriation settles the question. But where two parties independently are employing the same mark upon goods of the same class, but in separate markets wholly remote to one from the other, the question of prior appropriation is legally insignificant, unless at least it appear that the second adopter

has selected the mark with some design inimical to the interests of the first user, such as to take the benefit of the reputation of his goods to forestall the extension of his trade, or the like. *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, *affirming* (C. C. A. 7th Cir. 1913) 208 Fed. 513, 125 C. C. A. 515, L. R. A. 1916D 136.

Loss of trademark rights.—Trademark rights, like others that rest in user, may be lost by abandonment, nonuser, laches or acquiescence. Abandonment, in the strict sense, rests upon an intent to abandon. As to laches and acquiescence, it has been repeatedly held, in cases where defendants acted fraudulently or with knowledge of plaintiff's rights, that relief by injunction would be accorded although an accounting of profits should be denied. *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, *affirming* (C. C. A. 7th Cir. 1913) 208 Fed. 513, 125 C. C. A. 515, L. R. A. 1916D 136.

TRADE UNIONS AND COMBINATIONS AND TRUSTS

Vol. VII, p. 336, sec. 1.

The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 35 S. Ct. 473, 62 U. S. (L. ed.) 968.

"Improvement of business and its efficiency can be striven for without offense to the law." *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

"Not every joinder of competing businesses or acquisition of instrumentalities that have been used in competition is an undue restraint of trade or a creation of a monopoly. Each situation must be measured by the rule of reason. And a fundamental test is injury to the public." *American Press Ass'n v. U. S.*, (C. C. A. 7th Cir. 1917) 245 Fed. 91, 157 C. C. A. 287, L. R. A. 1918A 1039.

"Merely because they leave open some branches of the business to the enterprise of others" is not proof that a combination does not violate the statute. *U. S. v.*

United Shoe Machinery Co., (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Act not concerned with state laws.—This Act does not pick up the laws of the state for original enforcement. It deals only with actual conditions affecting interstate commerce whether they are authorized by state laws or not. *U. S. v. Southern Pac. Co.*, (D. C. Utah 1917) 239 Fed. 998.

No overt act is necessary in order to constitute a violation of this Act, the offense being complete when the conspiracy is entered into. *U. S. v. Bopp*, (N. D. Cal. 1916) 237 Fed. 283; *Knauer v. U. S.*, (C. C. A. 8th Cir. 1906) 237 Fed. 8, 150 C. C. A. 210; *U. S. v. Rintelen*, (S. D. N. Y. 1916) 233 Fed. 793.

"Contract, combination, * * * or conspiracy."—Under this section there must be a "contract, combination, or conspiracy in existence, in present force at the time the bill is filed. 'Contract, combination, or conspiracy'—the collocation of words, or course, is influential, under familiar canons of statutory interpretation, in clearing and restricting each of the words; in short, necessarily they are all of the same genus." *U. S. v. Quaker Oats Co.* (N. D. Ill. 1916) 232 Fed. 499.

"The intent is the touchstone not because we are concerned with moral delinquency, but with a test of the probable

persistence of the combination's course of conduct." *U. S. v. Corn Products Refining Co.*, (S. D. N. Y. 1916) 234 Fed. 964.

So a combination is not excused because it was induced by good motives or produced good results. *Thomsen v. Cayser*, (1917) 243 U. S. 66, 37 S. Ct. 353, 61 U. S. (L. ed.) 597, Ann. Cas. 1917D 322, reversing *Union Castle Mail Steamship Co. v. Thomsen*, (C. C. A. 2d Cir. 1911) 190 Fed. 536, 111 C. C. A. 368.

"If, in the judgment of the law, a contract or co-operating agreement is such as to work an undue and unreasonable restraint of trade, and through such restraint to monopolize trade or any part of it, the judgment is one of condemnation, no matter how innocent or otherwise praiseworthy the motives of those who had part in it." *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

"The courts have held that so far as intent is involved (that is, intent either to violate the law or thereby to inflict injury) persons so combining or contracting are presumed to have intended the necessary, natural and probable consequences of their acts and agreements, and if their effect is to unduly restrain interstate trade with consequent injury, then the combination is illegal and the participants are chargeable with the consequences and are liable for the damages resulting." *Bluefields Steamship Co. v. United Fruit Co.*, (C. C. A. 3d Cir. 1917) 243 Fed. 1, 155 C. C. A. 531.

"The effect upon the industry is a factor in determining the illegality of the combination, and perhaps it is yet an open question whether or not the test is to be found only in the combination of enough producing capacity to control supply, and fix prices, at least until new capital be induced into the field, or whether it must also be shown that the combination has injured the public in the exercise of that power. The opinions of the Supreme Court certainly seem to indicate that it is the power and not its exercise which is the test. * * * If the decisions of the Supreme Court are to be so understood, it is the mere possession of an economic power, acquired by some form of combination, and capable, by its own variation in production, of changing and controlling price, that is illegal." *U. S. v. Corn Products Refining Co.*, (S. D. N. Y. 1916) 234 Fed. 964.

Question of violation for court.—The question whether there was a combination in violation of this Act is for the court to decide where there is no conflict in the evidence. *Thomsen v. Cayser*, (1917) 243 U. S. 66, 37 S. Ct. 353, 61 U. S. (L. ed.) 597, Ann. Cas. 1917D 322, reversing *Union Castle Mail Steamship Co. v. Thomsen*, (C. C. A. 2d Cir. 1911) 190 Fed. 536, 111 C. C. A. 368.

Application of Act—In general.—

"Contracts which by reason of the intent, or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or by unduly obstructing the course of trade are within the Act." *Stewart v. W. T. Rawleigh Medical Co.*, (Okla. 1916) 159 Pac. 1187, L. R. A. 1917A 1276.

Defendants need not be engaged in interstate commerce.—"The Act in question does not require that the defendants should have been engaged in interstate commerce. If they were all engaged exclusively in intrastate commerce, and they formed a conspiracy to restrain the trade of the manufacturers and wholesalers who were engaged in interstate commerce, that would make them guilty." *Knauer v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 8, 150 C. C. A. 210.

Unfair business practices.—"An action does not lie under the Sherman Act for unfair business practices." *American Steel Co. v. American Steel, etc., Co.*, (D. C. Mass. 1916) 244 Fed. 300.

Action of court in taking possession of combination.—The court violates no anti-trust law of the United States in taking possession of or in operating an insolvent railroad system which it is alleged was formed in violation of this Act. *Kansas City Southern R. Co. v. Lusk*, (C. C. A. 8th Cir. 1915) 224 Fed. 704, 140 C. C. A. 244.

Patents.—"Where an article has been sold it passes beyond the monopoly given by the patent, and conditions cannot be imposed upon it. Leases are not of this character; they do not convey the title." *U. S. v. United Shoe Machinery Co.*, [1918] 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968, holding that certain so-called "tying" clauses in leases by which the use of certain patented shoe making machinery was granted by the corporate owner of the patents, did not offend against the Anti-Trust Act."

Shoe-bottoming machinery.—A certain interchangeability in the patented shoe-bottoming machinery made by several corporations is not conclusive evidence of competition which would condemn the consolidation of such corporations into a single corporation organized for the purpose. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968, holding that a consolidation of a number of corporations engaged in making noncompetitive patented shoe-bottoming machinery principally in use by shoe manufacturers in the kinds of work to which they are respectively adapted is not a combination in restraint of trade or commerce, condemned by the statute.

A purpose unlawfully to suppress competition, cannot be imputed to a corporation formed by the consolidation of a

number of corporations manufacturing non-competitive patented shoe-bottoming machinery by reason of its subsequent acquisition of the plant and machinery of a shoe-manufacturing corporation, and of the shoe-machinery interest of the principal stockholder in that corporation, where the inducements of the purchase were to enable the use in one machine, without any patent infringement, of both the underlying invention owned by the consolidated company, and a patent owned by such principal stockholder for a particular and subordinate form of operation, and to compose patent infringement suits, both pending and prospective. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

The Anti-Trust Act does not condemn a contract whereby a corporation formed by the consolidation of a number of corporations manufacturing noncompetitive patented shoe-bottoming machinery acquired the stock of another corporation making metallic fastening machines, merely by reason of a provision therein that the sellers should, for a limited term, assign to the purchaser any other inventions relating to shoe machinery which they should make. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Acquisitions by a corporation formed by the consolidation of a number of corporations manufacturing noncompetitive patented shoe-bottoming machinery, of other patents, property, and business, must be judged separately, not in accumulation, for the purpose of determining whether there has been a violation of the Anti-Trust Act, where such acquisitions "were not coincident in time nor parts of the same transactions. . . . were scattered through a period of years and varied each from the other, had no dependency, were different and unrelated steps in the development of the business of defendants." *U. S. v. United Shoe Mach. Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Articles protected by patents or trademarks.—If the subject matter of a contract, which otherwise would be illegal because in restraint of trade, is a patented article, this takes away the illegality only to the extent to which the field of the trade, controlled through the combination, is coextensive with the field within which exclusive control has been granted by the law. *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

"The authorities are numerous that, when a manufacturer of only one article of food and drink, sells it in bulk, and also puts it up in bottles, the latter bearing a distinctive trademark, a purchaser of the article in bulk will be guilty of unfair competition, and enjoined, if bottling it and affixing the manufacturer's distinctive

labels upon the goods bottled by him." *Coca-Cola Co. v. Butler*, (E. D. Ark. 1916) 229 Fed. 224.

"The trademark laws, like the patent laws, give the owner a monopoly which neither the Sherman Act nor any other act of Congress forbids. It would be a paradox to say that the exercise of a right, expressly granted by law, is unlawful." *Coca-Cola Co. v. Butler*, (E. D. Ark. 1916) 229 Fed. 224.

Combinations and contracts to affect prices and terms of sale.—"It is the general and well-settled rule that a system of contracts between a manufacturer and retail dealers, by which the manufacturer, in connection with absolute sales of his product, attempts to control the resale prices for all sales, by all dealers, eliminating all competition and fixing the amount which the ultimate purchaser shall pay, amounts to restraint of trade, and is invalid both at common law and, so far as it affects interstate commerce, under the Sherman Anti-Trust Act." *Ford Motor Co. v. Union Motor Sales Co.*, (C. C. A. 6th Cir. 1917) 244 Fed. 156, 156 C. C. A. 584; *Stewart v. W. T. Rawleigh Medical Co.*, (Okla. 1916) 159 Pac. 1187, L. R. A. 1917A 1276.

And a contract, providing that the principal obligor shall sell no other goods than those sold to him by the other party to the contract, to sell such goods at prices indicated by the latter and to have no other business or employment, being interstate in character, is subject to the inhibition of this Act. *Rawleigh Medical Co. v. Mayberry*, (Tex. Civ. App. 1917) 193 S. W. 199.

Coal companies and producers.—In the case cited at the end of this paragraph the situation was as follows: The Holding Company, already the owner of the capital stock of the Philadelphia & Reading Coal & Iron Company, became the majority stockholder in the Central Railroad Company, which owned nearly all the stock of the Wilkes-Barre Coal Company. The two railroads had been carrying the coal of these two large producers to many of the same markets, where the coal had been sold in competition. These carriers transported about one-third of the total tonnage of anthracite carried by all the railroads that reached the anthracite field, and the two coal companies disposed of more than 20 per cent of all the coal taken to the market. Together they operated 45 collieries out of 276, and 5 washeries out of 51. There were about 120 other producers, marketing about 50,000,000 tons. The court said: "Upon the facts thus stated we think the union of these interests in the Holding Company is condemned by the rules laid down in the *Northern Securities v. U. S.* [1904] 193 U. S. 197, 24 S. Ct. 436, 48 U. S. (L. ed.) 679; and in *U. S. v. Union Pac.*

R. Co., [1912] 226 U. S. 61, 33 S. Ct. 53, 57 U. S. (L. ed.) 124." U. S. v. Reading Co., [E. D. Pa. 1915] 226 Fed. 229.

Railroads.—The Act was not intended to create competition by destroying a proprietary relation formed long before its passage and by the means of which a railroad system has been brought into existence. U. S. v. Southern Pac. Co., (D. C. Utah 1917) 239 Fed. 998.

Where there was prior to 1870 an existing continuous, common control of two railroads created by leases executed and observed by the parties and unquestioned by the state and there never was a time when there was in any real substantial sense "a natural and existing competition in interstate commerce, it was held that the acquisition by one company of the stock of the other in 1899 was not in violation of this Act. U. S. v. Southern Pac. Co., (D. C. Utah 1917) 239 Fed. 998.

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Board of trade rule.—No unlawful restraint of commerce which may be enjoined as a violation of the Federal Anti-trust Law is imposed by a rule of the Chicago board of trade which prohibits its members from purchasing or offering to purchase, during the period between the close of its "Call" session and the opening of the session on the next business day, any grain "to arrive" at a price other than the closing bid at the Call. Board of Trade v. U. S., (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

Miscellaneous cases.—The fact that an article is sold under a trade name, as for instance a proprietary medicine, does not protect it. Stewart v. W. T. Rawleigh Medical Co., (Okla. 1916) 159 Pac. 1187, L. R. A. 1917A 1276.

Where an organization was composed of bill posters owning billboards in several thousand of the most desirable cities and towns throughout the United States and its object was to control the business of national poster advertisements throughout the country, and to limit the display of national posters at prices fixed by the organization to the boards of members thereof, there being but one member in each city or town, it was held that such organization created a monopoly in violation of the Sherman Act warranting a decree in favor of the complainant although evidence was introduced showing a general improvement in, and development of, the whole bill-posting business during the existence of the organization. U. S. v. Associated Bill Posters, (N. D. Ill. 1916) 235 Fed. 540.

Where the defendants' association did not confine its activities to its own members and their relations to such persons as from time to time might be placed upon its black list, but went further, and contem-

plated that the black list, made by its executive committee, should be circulated among nonmembers as well as members, and that outsiders should be notified that they, too, must refrain from doing business with the persons who had been blacklisted by the association, or they, too, would be blacklisted, if done with the intent to restrain trade with the victim and thereby to coerce him, it is unlawful. U. S. v. King, (D. C. Mass. 1915) 229 Fed. 275.

In another case there was held to be a violation of the Act under the following facts: The plan was first to combine the defendants, who were manufacturers and importers of films, in an agreement to act as one man might have acted. Lists of exchanges and of theatres were prepared, and no exchange was permitted to have films, and no theatre to exhibit them, unless with the consent of all the defendants. The names of none appeared upon the list except such as bought all supplies from the defendants, and any who dealt otherwise were dropped. Every theatre was required to pay a royalty for the use of a projecting machine, even when the machine had been owned by the exhibitor before the combination was formed. The films passed into the possession of exchanges and exhibitors under an agreement which enabled the defendants to recall them at will. U. S. v. Motion Picture Patents Co., (E. D. Pa. 1915) 225 Fed. 800.

Where the issues made by the pleadings were whether there was an unlawful combination to control the price of grape juice, or unlawful discrimination against the plaintiff in charging him a greater price than other jobbers, it was said that if there was such a combination to require all dealers to sell at the price fixed by the manufacturer upon the penalty of not being allowed to sell on an equality with other traders, and the plaintiff was the victim of it, it was no defense to show that the plaintiff was required to charge only an average profit, or that it was the custom of trade for manufacturers to violate the law. Dr. Miles Medical Co. v. John D. Park, etc., Co., (1911) 220 U. S. 373, 31 S. Ct. 376, 55 U. S. (L. ed.) 502. Nor would it avail the defendant, against the charges made by the plaintiff, to show that it had not violated the law by making a combination with manufacturers of other brands of grape juice. Frey v. Welch Grape Juice Co., (C. C. A. 4th Cir. 1917) 240 Fed. 114, 153 C. C. A. 150.

In a case where there was an association of lumber dealers it was held that the purpose was to prevent wholesalers and manufacturers from selling direct to customers, and that, under the facts, there was a violation of this Act. U. S. v. Hollis, (D. C. Minn. 1917) 246 Fed. 611.

When an association controlling 75 per cent. of a certain commodity refuses to do business with any given dealer in it, its action so clearly and naturally restrains his trade that an intent to do so must be presumed from the act itself. *U. S. v. King*, (D. C. Mass. 1915) 229 Fed. 275.

Before the Sherman Act it was the law that a trader might reject the offer of a proposing buyer, for any reason that appealed to him; it might be because he did not like the other's business methods, or because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act, has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the government. *Great Atlantic, etc., Tea Co. v. Cream of Wheat Co.*, (C. C. A. 2d Cir. 1915) 227 Fed. 46, 141 C. C. A. 594. See also *Great Atlantic, etc., Tea Co. v. Cream of Wheat Co.*, (S. D. N. Y. 1915) 224 Fed. 566.

Where a combination is not obnoxious to the Sherman Act its appointment of an exclusive selling agent is not violative of this Act. *American Sea Green Slate Co. v. O'Halloran*, (C. C. A. 2d Cir. 1915) 229 Fed. 77, 143 C. C. A. 353.

A motor car company has the right to determine that its agents shall sell its cars at its own price. So a contract entered into by such a company with an agent which contained a stipulation that cars were to be invoiced to him at a price to the purchaser fixed in advance by the company, giving him the privilege to sell in certain counties and no others and restricting him from selling the cars of any other motor company in the same counties and also providing for remittances in case of sales, it was held that this was a contract of consignment, not of sale, and, therefore, although interstate in character, not obnoxious to this Act. *Cole Motor Car Co. v. Hurst*, (C. C. A. 5th Cir. 1916) 228 Fed. 280, 142 C. C. A. 572.

Where a concern is going out of business, it is not a violation of this law to sell its plant to a sole competitor, as this Act does not require the stockholders of a corporation to sustain a loss if that loss can be prevented without injury to the public. *American Press Ass'n v. U. S.*, (C. C. A. 7th Cir. 1917) 245 Fed. 91, 157 C. C. A. 387.

The fact that a combination of steamship lines was formed in a foreign country does not relieve it from the operation of this Act where it affects foreign commerce of this country and is put into operation here. *Thomsen v. Cayser*, (1916) 243 U. S. 66, 37 S. Ct. 353, 61 U. S. (L. ed.) 597, Ann. Cas. 1917D 322,

reversing Union Castle Mail Steamship Co. v. Thomsen, (C. C. A. 2d Cir. 1911) 190 Fed. 536, 111 C. C. A. 368.

Proceedings under Act—Right of individual generally.—A private individual may not raise the question of the violation of the Act, unless he can show some special damage which he has suffered by that violation, which damage differs from the damage suffered by the general public. *Union Pac. R. Co. v. Frank*, (C. C. A. 8th Cir. 1915) 226 Fed. 906, 141 C. C. A. 510.

Necessity of alleging facts and particulars.—“It is essential in a case like this to descend to particulars, and not to rely simply on the words of the statute in pleading.” *U. S. v. Cowell*, (D. C. Ore. 1917) 243 Fed. 730.

Sufficiency of indictment.—“If an intent to restrain trade is apparent from the indictment, it need not be explicitly alleged.” *U. S. v. King*, (D. C. Mass. 1915) 229 Fed. 275.

“In all charges of conspiracy, the conspiracy itself is the gist of the offense, and where a conspiracy is charged to violate the laws of the United States, if the conspiracy be specifically alleged, it is not necessary to allege the details of the law of the United States to be violated with the accuracy it would be if the charge were directly of the violation of the law of the United States, and not of the conspiracy to violate it.” *Knauer v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 8, 150 C. C. A. 210.

An indictment has been held to sufficiently charge a violation in restraint of trade under this Act where it alleges that the defendants unlawfully and knowingly entered into a conspiracy in unreasonable restraint of trade, which conspiracy was, in substance, that the defendants “should appoint” an executive committee, that such executive committee “should constitute” a listing committee, that said listing committee “should cause” a list of undesirable receivers to be prepared and published, that all the members of the association “should thereafter refuse to have any further business dealings” with the blacklisted persons, that the defendants constituted said listing committee, and, “in pursuance of said conspiracy and to effect the object thereof,” did blacklist a certain named person, and that the remaining members of the association refused to deal with him, thereby restraining him from carrying on interstate trade. *U. S. v. King*, (D. C. Mass. 1915) 229 Fed. 275.

“While the parties are engaged in the operation of the design, or in carrying the same into effect, they are transgressing the statute, they are still agreeing to the unlawful offense, and still cohering in the thing that the law condemns. Thus the offense becomes a continuing one, and

it is only necessary to allege that the parties were engaged in the unlawful combination or contract between specified dates. By such allegation, the offenders are apprised of the time of their transgression." *U. S. v. Cowell*, (D. C. Ore. 1917) 243 Fed. 730.

Where the defendants were informed by the indictment that many persons, corporations, etc., throughout the United States were engaged in the manufacture of the different articles and supplies mentioned, and with those articles were engaged in foreign trade and commerce, and that to hinder and restrain such trade and commerce was the particular purpose and object of the alleged conspiracy, it was said: "The purpose of the indictment in the present case is . . . to charge a conspiracy in violation of the first section of the Sherman Act, namely, a conspiracy in restraint of trade and commerce with foreign nations; the very gist of the offense being the conspiracy. When the conspiracy is once entered into, as under the common law, the offense is complete. The conspiracy does not go to the restraint in trade of any particular individual or corporation, or combination of men, but to the restraint of all foreign trade where munitions of war are the subject of commerce. So what more could be essential, when the defendants are informed that many persons, corporations, and combinations of men are engaged in the manufacture of such articles constituting munitions of war, and are also engaged in transporting the same in foreign trade and commerce, the alleged purpose and object of the conspiracy being in restraint of such trade and commerce? Can it be said that the defendants are not informed of the nature and cause of the accusation?" *U. S. v. Rintelen*, (S. D. N. Y. 1916) 233 Fed. 793.

An indictment is not bad for duplicity on the ground that it charges both a conspiracy in restraint of trade and an actual restraint of trade where it is clear that what the indictment charges is a conspiracy and that the overt acts described in it are alleged in support of that charge and not as separate crimes. *U. S. v. King*, (D. C. Mass. 1915) 229 Fed. 275.

As to whether an indictment is duplicitous in charging more than one offense under this Act it has been said: "It is claimed that the indictment is duplicitous, in that it charges a conspiracy to violate more than one section of the Sherman Law in a single count. 'The court will never be keen to hold an indictment bad for duplicity.' 5 *Ruling Case Law*, 1081. Without intimating that we think such a thing possible under the Sherman Law as an indictment being duplicitous because it charges in one count a violation of two or more sections of the Act, we are satisfied that a charge in a single count

of a conspiracy to violate two or more laws of the United States is not duplicitous." *Knauer v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 8, 150 C. C. A. 210.

In the case of an indictment under this statute, it is unnecessary to set out any overt act. Simply the combination or contract in any form in restraint of trade between the states or with foreign nations constitutes the offense, and it is only essential to charge the combination or contract. *U. S. v. Cowell*, (D. C. Ore. 1917) 243 Fed. 730.

Where the object of an association is nowhere described in the indictment, and there is no allegation of any purpose or intent by its members or by the defendants to restrain trade, and the reasons for which it blacklisted persons are not stated and they do not appear to have related to the sale or purchase of commodities or to interstate commerce, the object will, on demurrer, be presumed to have been legitimate. *U. S. v. King*, (D. C. Mass. 1915) 229 Fed. 275.

Motion to consolidate indictments.—Where the statement of the matters embraced in two indictments for conspiracy sufficiently showed that the charges contained in them are charges for acts and transactions connected together, they being against the same persons for the same acts or transactions, a motion that they be consolidated and tried together will be granted. *U. S. v. Bopp*, (N. D. Cal. 1916) 237 Fed. 283.

Violation of Acts as defense to suit on contract.—If the Sherman Act was violated by a combination in which the plaintiff company participated, and injury to that company was a natural consequence, then the case comes within the well-settled principle that where a criminal combination is made or a criminal enterprise is undertaken by two parties and either party violates the agreement with injury to the other, the law will afford the injured party no redress but will leave him as it finds him. *In pari delicto potior est conditio defendentis*. *Bluefields Steamship Co. v. United Fruit Co.*, (C. C. A. 3d Cir. 1917) 243 Fed. 1, 155 C. C. A. 531.

So if upon evidence abundantly sufficient, the jury has found that all the stockholders of a plaintiff company joined in forming an alleged unlawful combination and in placing their company in it; acquiesced for a long term of years in the part their company played in that combination and in the manner it played it or was caused to play it; and accepted and enjoyed the profits which sprang from it, the corporation itself is bound by their acts and is precluded from asserting a right of action based upon them. *Bluefields Steamship Co. v. United Fruit Co.*, (C. C. A. 3d Cir. 1917) 243 Fed. 1, 155 C. C. A. 531.

In an action by receivers of an insolvent railroad corporation to disaffirm a contract for the use of depots and terminals of another railroad company it was held that the court would not investigate the circumstances attending the acquirement by the insolvent corporation of another railroad, thereby rendering as alleged the use of the terminal facilities granted by the contract unnecessary, such investigation not being sought for the purpose of enforcing the Anti-Trust Law, but to enable it to decide whether it would as a matter of business assume the performance of the contract. *Kansas City Southern R. Co. v. Lusk*, (C. C. A. 8th Cir., 1915) 224 Fed. 704, 140 C. C. A. 244.

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"The statute prohibits only such monopolies as are unjust and unreasonable restraints of trade." *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1915) 226 Fed. 62.

"There is no limit in this country to the extent to which a business may grow, and the acquisitions of property . . . standing alone would not be deemed an illegal monopoly; but when such acquisitions are accompanied by an intent to monopolize and restrain interstate trade by an arbitrary use of the power resulting from a large business to eliminate a weaker competitor, then they no doubt come within the meaning of the statute." *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1915) 226 Fed. 62.

"It seems to me that the word 'control,' as used in the declaration, is the substantial equivalent of 'monopolize,' as used in the statute, and that by the contracts in question the defendant, upon the allegations of the declaration, obtained an illegal monopoly of the trade in lasts for rubber footwear. A cause of action is therefore stated under the second section of the statute." *Hood Rubber Co. v. U. S. Rubber Co.*, (D. C. Mass. 1916) 229 Fed. 583.

Intent.—"If there is a monopoly in fact, . . . if there is an exclusion, the taking unto one's self, completely or so far near completion that it is effective, and a monopoly is created, then the intent is wholly immaterial. It would be the fact of monopoly that would be determinative, and not the purposes or intents of the people creating the monopoly; but if no monopoly exists, there may still be an offense for which the remedies—the civil and injunctive remedies—of the statute may be appropriate, if there are acts which constitute an attempt to create a monopoly. But in the matter attempted, . . . the element of intent becomes essential." *U. S. v. Quaker Oats Co.*, (N. D. Ill. 1916) 232 Fed. 499.

Reduction of price of article no defense.
—Whatever reduction may be made in

the price of an article does not compensate for the suppression of competition in the industry as a whole, and it is no justification of an illegal monopoly to assert that it has reduced the price of an article produced by it, as this may have been done simply to injure a rival. *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1915) 226 Fed. 62.

Burden of proof.—Where an unlawful monopoly is alleged the burden rests upon the defendants to prove that this was accomplished by lawful methods, that is, that it resulted from normal processes of growth, from the mere acquisition of property, or from the superior merit of the products, assuming this to have been an important factor. *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1915) 226 Fed. 62.

Particular instances.—The Lehigh Valley Railroad Company acquired control, mostly through the Lehigh Valley Coal Company, of a considerable portion of coal lands in Pennsylvania. The Lehigh Valley Coal Company owned or controlled rather less than 13 per cent. of the nearly contiguous mining regions in Pennsylvania known as the Wyoming, Lehigh, and Schuylkill. That acreage represented a little less than 27 per cent. of the coal lands naturally and conveniently tributary to the lines of the railroad company. Of all anthracite coal transported by all carriers, the Lehigh Railroad was then carrying about 18 per cent., and of that percentage approximately four-fifths came from mines owned or controlled by the Lehigh Valley Coal Company or was produced through such exclusive transportation contracts as had been made with another company. The Lehigh Valley Railroad Company did not own any shares in any company selling coal beyond the limits of Pennsylvania. It was held that a monopoly was not shown, it also appearing that there was a dissociation in good faith between the coal company and the railroad company. *U. S. v. Lehigh Valley R. Co.*, (S. D. N. Y. 1914) 225 Fed. 399.

The fact that the land holdings of a coal mining company are large and that the company ships and sells the largest percentage of all the coal that reaches the market is not enough to create a monopoly. Before such facts can be counted an offense under the statute it is necessary to go further and to show that harm has been done or is likely to be done. *U. S. v. Reading Co.*, (E. D. Pa. 1915) 226 Fed. 229.

"A peculiarity of the rights of the owner of a patent, as distinguished from other property, is this: Each has the right to sell that which is his, but the owner of the patent has the exclusive right to sell his patented article. This is, in a very substantial sense, a monopoly. It must be, however, that the monopoly here meant is not the monopoly con-

demned by the act of 1890. To hold otherwise would clearly be . . . a logical absurdity, because there can be no such thing as restraint in a trade which has no existence, and a monopoly created by law, in pursuance of a policy of the law, cannot be said to result from such restraint." *U. S. v. Motion Pictures Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

But patent rights and sales price restrictions for a patented article cannot be used as a shield to nullify the Sherman Act. *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1915) 226 Fed. 62.

Right to trial by jury.—In the case of an indictment for conspiring to monopolize commerce it has been said that it seems reasonable to hold that the practice as to misdemeanors and felonies may be so far assimilated as to allow one who, under indictment for a misdemeanor, interposes a special plea in bar which in its facts does not necessarily involve an admission of the crime charged, to plead over and to have the question of guilt on the merits tried by a jury. *U. S. v. Rockefeller*, (S. D. N. Y. 1915) 226 Fed. 328.

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"The jurisdiction conferred by the Sherman Act on the courts of the United States is 'for the purpose of making the relief to be afforded by a finding of illegal existence as broad as would be the necessities resulting from such finding.'" *Delavan v. New York, etc., R. Co.*, (1915) 216 N. Y. 359, 110 N. E. 763.

Congress having drawn to the courts of the United States paramount jurisdiction and authority in cases involving a violation of this Act, the subject is then one of general law, in respect of which the courts of the United States are entitled to exercise their independent judgment in light of the settled principles that must always control the determination of the legal rights of parties. *Skaggs v. Kansas City Terminal Ry. Co.*, (W. D. Mo. 1916) 233 Fed. 827.

Who may sue to enjoin.—If the facts show any violation of this Act a private person cannot maintain a suit for an injunction under this section. *Paine Lumber Co. v. Neal*, (1917) 244 U. S. 459, 37 S. Ct. 718, 61 U. S. (L. ed.) 1256.

Enforcement of the provisions of the federal Anti-Trust Act is by the terms of the Act itself committed to the Attorney-General of the United States, except in cases where an individual can show some special damage resulting to him from a violation of the provisions of the Act. *State Public Utilities Commission v. Romberg*, (1916) 275 Ill. 432, 114 N. E. 191.

Minority stockholders cannot maintain a suit to procure a decree annulling a deed of all the corporate property. *Geddes v. Anaconda Copper Min. Co.*, (C. C. A.

9th Cir. 1917) 245 Fed. 225, 157 C. C. A. 417.

In an answer filed in a suit to enjoin enforcement of a board of trade rule allegations concerning the history and purpose of the rule are relevant and should not be stricken out. *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

Burden of proof.—Where there is a denial of plaintiff's allegation of an assignment of the claim such denial puts upon him, in a suit at law, the burden of proving the assignment and he cannot well make such proof without the production of a written assignment, if it exists. And in this connection it is said that a defendant in a suit at law is not entitled to a discovery in equity of his adversary's evidence sustaining his action. *General Film Co. v. Sampliner*, (C. C. A. 6th Cir. 1916) 232 Fed. 95, 146 C. C. A. 287.

Evidence.—An avowal of monopoly, achieved or to be achieved, cannot reasonably be inferred from a circular which the directors of a corporation making patented shoe-bottoming machinery sent to its stockholders just after consolidation with several like corporations, setting forth that great advantages were to be secured by the control in one corporation of the most efficient types of shoe machinery, and that the directors and large stockholders had been in negotiation to accomplish that end, and that the new corporation would, from time to time, acquire other shoe-machinery properties either by direct ownership or by purchase of shares of their stock, or from a like declaration in a contract between the new corporation and its Australian agent, but such circular and agreement must be regarded as simply the business expression and foresight of the advantages which would result from the concentration in one management of instrumentalities which, however different, supplement one another in the creation of a shoe. *U. S. v. United Show Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Dissolution of combination.—"Where a proposed plan for the abrogation of an illegal monopoly, which it has been found unduly and unreasonably restrains commerce, does not afford the relief to which the government is entitled, a decree for dissolution would seem proper even though some of the units may be noncompeting." *U. S. v. Eastman Kodak Co.*, (W. D. N. Y. 1916) 230 Fed. 522.

The court may, in a proper case, in addition to granting an injunction, make a decree of dissolution. *U. S. v. Corn Products Refining Co.*, (S. D. N. Y. 1916) 234 Fed. 964.

"A dissolution may not be decreed, unless there is reason to believe that more good than harm will come of it. As a

matter of course, in weighing the probabilities for good or evil, the chancellor must put aside any individual opinion he may have as to whether the community gains or loses by unlimited competition. The Anti-Trust Acts voice the will of Congress that the competitive regime shall be maintained. In contemplation of the law, any restraint of competition unlawfully brought about does harm. It is the duty of the courts to give effect to the legislative will, but it is equally their duty so to shape their decrees as to bring about the result desired by Congress with the least possible waste of anybody's time or of anybody's money." *U. S. v. American Can Co.*, (D. C. Md. 1916) 234 Fed. 1019. See also *U. S. v. American Can Co.*, (D. C. Md. 1916) 230 Fed. 859.

Combination practically dissolved as result of war.—Where a combination against which a proceeding is directed is practically dissolved as a result of war between the nations of which the parties thereto are residents, the United States Supreme Court will not pass on the merits of the controversy. *U. S. v. Hamburg, etc., Packetfahrt, etc.*, (1916) 239 U. S. 466, 36 S. Ct. 212, 60 U. S. (L. ed.) 387, reversing *U. S. v. Hamburg-American Steamship Line*, (S. D. N. Y. 1914) 216 Fed. 971. See also *U. S. v. American-Asiatic Steamship Co.*, (1917) 242 U. S. 537, 37 S. Ct. 233, 61 U. S. (L. ed.) 479.

Deposit may be required instead of injunction.—Where the plaintiff, the owner of a few shares of stock in a corporation, sought to enjoin the carrying out of a contemplated agreement of sale by a holding company on the ground that it violated this Act, it was held proper to refuse the injunction but to require a deposit to protect the plaintiff in case of loss. *Venner v. Pennsylvania Steel Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 407, 147 C. C. A. 343.

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Construction and application in general.—This section provides a penalty. It awards civil damages which are made exemplary by virtue of being trebled. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

When a penalty of triple damages is sought to be inflicted, the statute should not be read as attempting to authorize liability to be enforced otherwise than through the verdict of a jury in a court of common law. The statute plainly provides the latter remedy and it provides no other. *Fleitmann v. Welsbach St. Lighting Co.*, (1916) 240 U. S. 27, 36 S. Ct. 233, 60 U. S. (L. ed.) 505.

There is nothing in the Sherman Act confining the right to recover under this section to persons engaged in interstate

commerce, or whose business or property injured is interstate commerce. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

Where it was contended that the restriction and control relied on by the plaintiff covered only the manufacture and sale of lasts by companies within a single state, Massachusetts; that the plaintiff was a citizen of Massachusetts, and manufactured only in that state; that the plaintiff was not a dealer in lasts, but only desired to buy them for its own use; that all purchases of lasts by the plaintiff would have been intrastate transactions; and that the alleged restraint, so far as it affected the plaintiff, was not of an interstate character, and was not within the Sherman Act, the court said: "Such a control the defendant had, upon the allegations of the declaration, no right to acquire, and, having done so intentionally and unlawfully, it is liable for the consequences of its illegal conduct." *Hood Rubber Co. v. U. S. Rubber Co.*, (D. C. Mass. 1916) 229 Fed. 583.

Jurisdiction of a federal court, limited as it is by law, cannot be made to depend upon argument. The jurisdiction must not be a matter of mere inference, but must appear by distinct averments according to the rules of good pleading. *Noyes v. Parsons*, (C. C. A. 9th Cir. 1917) 245 Fed. 689, 158 C. C. A. 91.

Nature of suit to recover treble damages.—Any cause of action properly brought under section 7 of the Sherman Act is certainly for a personal wrong, and therefore an action for tort. *Imperial Film Exch. v. General Film Co.*, (S. D. N. Y. 1915) 244 Fed. 985.

Where defendant is "found."—This section in providing that the defendant may be served where "found" did not intend to extend the scope of the process of this court. It meant to remove the existing limitations upon the venue of actions between diverse citizens and to permit the plaintiff to sue the defendant wherever he could catch him with a process good where it was executed. *Thorburn v. Gates*, (S. D. N. Y. 1915) 225 Fed. 613.

Foreign executor as defendant.—Without the aid of a statute a foreign executor cannot be sued under this Act outside of the territory of the sovereign who granted his letters. *Thorburn v. Gates*, (S. D. N. Y. 1915) 225 Fed. 613. See also *Thorburn v. Gates*, (S. D. N. Y. 1916) 230 Fed. 922.

Theatrical booking companies.—If, in the carrying out of a combination of theatrical booking companies which violates this Act, a performer is injured, the resulting damages are within this section. *Marienelli v. United Booking Offices of America*, (S. D. N. Y. 1914) 227 Fed. 165.

Who may sue.—"The law provides that any person who shall be injured in his business or property rights by reason of anything forbidden or declared unlawful by the act shall recover threefold the damages by him sustained. It is the source of the injury, and not the character of the property injured, which constitutes the test of recovery. Assuming that an unlawful conspiracy or combination in restraint of interstate commerce exists, then, if any person is injured by it in his business or property rights, he may recover." *Dowd v. United Mine Workers of America*, (C. C. A. 8th Cir. 1916) 235 Fed. 1, 148 C. C. A. 495.

As to the right of a stockholder to sue under this Act in behalf of the corporation for damages, it has been said: "Whether or not a corporation shall seek to enforce in the courts a cause of action for damages is, like other business questions, ordinarily a matter of internal management and is left to the discretion of the directors, in the absence of instruction by vote of the stockholders. Courts interfere seldom to control such discretion *intra vires* the corporation, except where the directors are guilty of misconduct equivalent to a breach of trust, or where they stand in a dual relation which prevents an unprejudiced exercise of judgment; and, as a rule, only after application to the stockholders, unless it appears that there was no opportunity for such application, that such application would be futile (as where the wrongdoers control the corporation), or that the delay involved would defeat recovery. . . . The fact that the cause of action is based on the Sherman Law does not limit the discretion of the directors or the power of the body of stockholders; nor does it give to individual shareholders the right to interfere with the internal management of the corporation." *United Copper Securities Co. v. Amalgamated Copper Co.*, (1917) 244 U. S. 261, 37 S. Ct. 509, 61 U. S. (L. ed.) 1119.

Cause of action assignable.—The cause of action under this section is assignable. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532; *Imperial Film Exch. v. General Film Co.*, (S. D. N. Y. 1915) 244 Fed. 985.

Though a cause of action under this section is assignable, yet where such an assignment to a lawyer amounts to champerty, it will not be enforced by the courts. *Sampliner v. Motion Picture Patents Co.*, (S. D. N. Y. 1917) 243 Fed. 277.

Effect of death or corporate dissolution.—It would seem to be most inequitable that the representatives of an individual or of a corporation whose business has been wrongfully destroyed shall be denied all remedy because of the death or corporate dissolution of the party they represent. *United Copper Securities Co. v.*

Amalgamated Copper Co., (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

Pleading in general.—In an action to recover treble damages under this section for a conspiracy entered into by certain decedents in their lifetime and by their executors after their death it is proper to require the plaintiff to state the dates of death of the decedents and the date of the accomplishment of the conspiracy or conspiracies charged and the incorporation of the defendant. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

Where the complaint charged a conspiracy entered into by certain decedents in their lifetime and by their executors after their death, and the court directed the words charging the executors to be stricken out, wherever they occurred, it was held that this was right, so far as the charge against them was for their own acts, but not so far as it was attempted to hold the estate of their testators liable. The pleader should have charged the executors officially for the acts of their testators and individually for their own acts. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

Allegations of a conspiracy to injure certain corporations in which the plaintiffs were also stockholders are proper as proof of the conspiracy whereby the plaintiffs were injured individually, although such persons could not recover damages for the corporate injuries. *United Copper Securities Co. v. Amalgamated Copper Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 574, 146 C. C. A. 532.

In an action to recover damages brought against the United States Rubber Company and six last companies, the latter being engaged separately in the manufacture of lasts and by whom it was agreed separately to sell no lasts until a certain date except to such persons as might be specified by the rubber company, the court discussed the allegations in the pleading and held that as to the last companies, no cause of action under the Sherman Act was stated. *Hood Rubber Co. v. U. S. Rubber Co.*, (D. C. Mass. 1916) 229 Fed. 583.

Limitation.—The limitation of five years prescribed by R. S. sec. 1047 (see vol. III, p. 100), for any "suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States," does not apply to the action for the threefold damages for injury to "business or property," authorized by this section. *Chattanooga Foundry, etc., Works v. Atlanta*, (1906) 203 U. S. 390, 27 S. Ct. 65, 51 U. S. (L. ed.) 241; *Harvey v. Booth Fisheries Co.*, (W. D. Wash. 1915) 228 Fed. 782.

Where a state statute provides that "an action upon a statute for a penalty or forfeiture where an action is given to the party aggrieved, or to such party and the state" shall be commenced within three years, and the legislature in another section provides that "an action upon a statute for a forfeiture or penalty to the state" shall be commenced within two years, it has been said that the statute upon which recovery is predicated is final, but that the right of recovery under this section is private and remedial and that under any view of the provisions above referred to the two-year limitation does not apply. *Harvey v. Booth Fisheries Co.*, (W. D. Wash. 1915) 228 Fed. 782.

Evidence.—"To recover under the seventh section plaintiffs must show that, as a result of defendant's acts, actual damages were sustained—damages in some amount which is susceptible of expression in figures. These damages must be proved by facts from which their existence is logically and legally inferable—not by conjectures, or estimates. They must not be speculative, remote, or uncertain." *American Sea Green Slate Co. v. O'Halloran*, (C. C. A. 2d Cir. 1915) 229 Fed. 77, 143 C. C. A. 353.

Damages—In general.—"The jurisdiction of the court and the province of the jury in such a case is to inquire whether the complainant has been injured in his business and property by reason of any such unlawful act. If it appears from the complaint and as proven that the plaintiff has been so injured, the court has jurisdiction, and upon the verdict of a jury is required to award the damages provided in the act. But if, on the other hand, he has not been so injured, or if he has been injured, but not by reason of anything forbidden or declared to be unlawful by the act, he cannot recover in the action." *Noyes v. Parsons*, (C. C. A. 9th Cir. 1917) 245 Fed. 689, 158 C. C. A. 91.

This section "gives a cause of action to any person injured in his person or property by reason of anything forbidden by the Act and the right to recover threefold the damages by him sustained. The plaintiffs alleged a charge over a reasonable rate and the amount of it. If the charge be true that more than a reasonable rate was secured by the combination, the excess over what was reasonable was an element of injury." *Thomsen v. Caysen*, (1917) 243 U. S. 66, 37 S. Ct. 353, 61 U. S. (L. ed.) 597, Ann. Cas. 1917D 322, reversing *Union Castle Mail Steamship Co. v. Thomsen*, (C. C. A. 2d Cir. 1911) 190 Fed. 536, 111 C. C. A. 368.

If a company is an unlawful combination, then damages directly caused by reason of its appointment of an exclusive agent might be shown, on the same theory that damages caused by other of its acts

could be shown. *American Sea Green Slate Co. v. O'Halloran*, (C. C. A. 2d Cir. 1915) 229 Fed. 77, 143 C. C. A. 353.

Loss of business.—In an action for damages for the loss of business of former customers on the ground that they ceased buying from the plaintiffs because of defendants' acts, it is for the plaintiffs to show that the loss was because of defendants' combination. *American Sea Green Slate Co. v. O'Halloran*, (C. C. A. 2d Cir. 1915) 229 Fed. 77, 143 C. C. A. 353.

Damages arising from the incidental loss of general business in other commodities are too remote and uncertain, as that loss, if any, the plaintiff might have prevented altogether by purchasing and selling the particular article without profit. *Frey v. Welch Grape Juice Co.*, (C. C. A. 4th Cir. 1917) 240 Fed. 114, 153 C. C. A. 150.

Damages where required to buy at higher prices.—Damages for loss resulting from the circumstance that plaintiffs were compelled to buy at a price higher than the market value are not recoverable where there is not sufficient evidence of market value from which the specific amount of loss can be calculated. *American Sea Green Slate Co. v. O'Halloran*, (C. C. A. 2d Cir. 1915) 229 Fed. 77, 143 C. C. A. 353.

Vol. VII, p. 346, sec. 8.

The word "associations" as used in this section has been construed as including unincorporated associations, such as labor organizations. *Dowd v. United Mine Workers of America*, (C. C. A. 8th Cir. 1916) 235 Fed. 1, 148 C. C. A. 495.

1916 Supp., p. 267, sec. 1.

Construction.—A careful reading of this section of the Act leaves no room for doubt as to what Congress intended. The language is plain, and the court is unable to find any ambiguity in it, which would make it necessary to resort, for aid in its construction, to any source outside the Act itself. *U. S. v. United Shoe Machinery Co.*, (E. D. Mo. 1916) 234 Fed. 127.

Application.—Where a contract involves and restrains interstate commerce it is not material that the particular acts of restraint alleged to be in violation of the Clayton Act occurred in the state in which the contract was made. *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (C. C. A. 2d Cir. 1916) 235 Fed. 398, 148 C. C. A. 660.

"Before the Sherman Act it was the law that a trader might reject the offer of a proposing buyer, for any reason that appealed to him; it might be because he did not like the other's business methods, or because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which no-

body else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act, has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the government." *Great Atlantic, etc., Tea Co. v. Cream of Wheat Co.*, (C. C. A. 2d Cir. 1915) 227 Fed. 46, 141 C. C. A. 594. See also *Great Atlantic, etc., Tea Co. v. Cream of Wheat Co.*, (S. D. N. Y. 1915) 224 Fed. 566.

The Clayton Act applies to contracts made before the passage of the Act. *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (C. C. A. 2d Cir. 1916) 235 Fed. 398, 148 C. C. A. 660.

1916 Supp., p. 271, sec. 4.

Constitutionality.—The constitutionality of this section as applied to leases has been sustained. *U. S. v. United Shoe Machinery Co.*, (E. D. Mo. 1916) 234 Fed. 127.

Parties.—Where an action is brought under this Act to enjoin the enforcement of certain provisions of leases alleged to be prohibited by section 3 of this Act even if the lessees were proper parties, which is doubtful, the jurisdiction of the court would not be ousted for a failure to join them, as only indispensable parties, and in some instances necessary parties, must be joined. But if any of the lessees believe that their interests may be injuriously affected by the action, they can apply to the court to be made parties, and the court will then determine whether leave to do so should be granted. *U. S. v. United Shoe Machinery Co.*, (E. D. Mo. 1916) 234 Fed. 127.

Shoe machinery leases.—"Where leases of shoe machinery, although they did not expressly forbid the use of other machines and materials than those of the lessor yet provided for a retention of right by the lessor of canceling the lease in case any other machines than those of the defendant were used in the manufacture of shoes, there was held to be a violation of the statute. *U. S. v. United Shoe Machinery Co.*, (E. D. Mo. 1916) 234 Fed. 127.

Motion picture projecting machine.—Where a contract entered into by the owner of a patent for motion picture projecting machine with a film manufacturing company gave to the latter a license to manufacture and sell the machines under certain specified terms and conditions and further provided that each machine should be used solely for exhibiting or projecting motion pictures containing the invention covered by letters patent which had expired, it was void as being in violation of the Clayton Act. *Motion Picture Patents Co. v. Universal*

Film Mfg. Co., (C. C. A. 2d Cir. 1916) 235 Fed. 398, 148 C. C. A. 660.

1916 Supp., p. 271, sec. 4.

In general.—Courts have jurisdiction to award damages for a violation of the provisions of the Clayton Act as to discrimination in prices although the Federal Trade Commission has made no determination as to the fact of discrimination. *Frey v. Cudahy Packing Co.*, (D. C. Md. 1916) 232 Fed. 640.

"A corporation may be sued under this statute where it transacts business. It cannot escape the obligation to respond because no agent of it, of the rank and character qualified to be served for it, can be there found. Suit may be there brought and process may issue to a district in which it cannot deny its liability to service. The act so construed will for practical purposes usually make it unimportant to consider, in connection with liability to suit and to service, any question except whether the defendant is doing or transacting business in a particular district, for, unless it is, it cannot possibly have any agent who, as agent, is therein." *Frey v. Cudahy Packing Co.*, (D. C. Md. 1915) 228 Fed. 209.

Service of process on agent.—As to service of process on an agent it has been said: "Provided the defendant is suable at all in the district, why not see to it that it shall be summoned in a way to which no possible objections can be made, and which cannot create a dangerous precedent. Whenever upon grounds not obviously frivolous the question is raised as to the authority of the agent upon whom process was served, why cannot the court suspend its answer until the plaintiff has had due process served, as the Clayton Act authorizes, in the home district of the defendant, upon some of its officers whose right to accept service for it cannot be gainsaid? When such service has been made, the question as to whether the earlier one was or was not good will have become so purely academic that there will seldom be an occasion to answer it at all." *Frey v. Cudahy Packing Co.*, (D. C. Md. 1915) 228 Fed. 209.

1916 Supp., p. 277, sec. 12.

"The purpose of the Act was, I think, to give the courts jurisdiction in any district in the United States where a corporation transacts business, whether in the sense of the decisions it is 'found' there or not, and then that service on it may be perfected at its home office in the district whereof it is an inhabitant or wherein it may be found; that is 'found' as provided in the decisions construing that term." *Southern Photo Material Co.*

v. Eastman Kodak Co., (N. D. Ga. 1916) 234 Fed. 955.

1916 Supp., p. 278, sec. 15.

"All that is necessary to state a cause of action under the Clayton Act is to charge that the defendants committed the acts prohibited by the statute and that they tend to substantially lessen competition or create a monopoly in interstate commerce." *U. S. v. United Shoe Machinery Co.*, (E. D. Mo. 1916) 234 Fed. 127.

1916 Supp., p. 280, sec. 19.

"Specific in terms" and "reasonable detail."—In a suit against an interstate telephone company by patrons of the company to compel the company to repair its lines, etc., and perform its duty to and contracts with the plaintiffs, it was held that an order was not obnoxious to this section which substantially followed the prayer of the bill and concluded by enjoining all persons whatsoever "from doing any acts or things which may interfere in any respect with the performance of the duties and obligations of the defendant company as a common carrier." *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

1916 Supp., p. 280, sec. 20.

"Case between an employer and employees."—In a suit against an interstate telephone company by patrons of the company to compel the company to repair its lines and other facilities so as to enable the plaintiffs to enjoy their rights, it was assumed by the court, "it being understood, of course, that the court is not deciding the point," that the power to issue an injunction restraining the defendant's striking employees from interfering with the company's cables, or with their repair or with employees repairing them, would be subject to the limitations of this section 20 of the Clayton Act. *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

"Lawful," "lawfully," "peaceful," "peacefully."—These words were emphasized by the court in holding that in a suit by patrons of an interstate telephone company to compel the defendant to repair its lines, etc., a certain provision in an order following the prayer of the bill was aimed to prevent unlawful acts and acts not peaceful, and was therefore not in excess of the court's power as limited in this section. *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

TREASURY DEPARTMENT

Vol. VII, p. 384, sec. 8.

Question submitted to comptroller of the treasury.—The salary of a judge who has served and for whose compensation specific appropriation has been made is not such a claim as affords any field for the operation of the Dockery Act.

And therefore disbursing officers are not authorized to submit the question of whether it should be paid to the comptroller of the treasury for decision. *Smith v. Jackson*, (C. C. A. 5th Cir. 1917) 241 Fed. 747, 154 C. C. A. 449.

WAR DEPARTMENT AND MILITARY ESTABLISHMENT

Vol. IX, p. 959, sec. 1116.

Nature of enlistment.—Voluntary enlistment rests on a contract between the recruit and the government. The contract is based on his offer of service and the acceptance of it by the military authorities. In making it, the parties deal at arms length; neither occupies a fiduciary position toward the other; each looks out for his (or its) own interest. Whether the contract is binding is determined by the principles of law applicable to contracts generally. Duress, fraud, misrepresenta-

tion, avoid a contract of enlistment as they would any other contract. *Ex parte Blackington*, (C. C. Mass. 1917) 245 Fed. 801.

Effect of contract.—In *Ex parte Blackington*, (D. C. Mass. 1917) 245 Fed. 801, it appeared that a person enlisted in the National Guard with the expectation that it would soon be drafted into federal service, as it was. He was below the required height, and was not physically fit for military service, but was passed by the medical examiner, acting as a recruiting officer,

because of personal bias and hostility toward him. It was held that he was not entitled to a discharge on habeas corpus, since the enlistment was based on a voluntary contract, and the personal animosity of the recruiting officer had no effect.

Vol. VII, p. 960, sec. 1117.

See notes to section 27 of the Act of June 3, 1916, ch. 134, *ante*, this volume, title, WAR DEPARTMENT AND MILITARY ESTABLISHMENT, at p. 947.

Vol. VII, p. 1017, sec. 1242.

Retention of title by government.—The fact that the title to a pistol is in the government at the time the same was pledged makes the offense complete, and the fact that its value had been charged to the soldier after its loss was discovered, could not affect the guilt or innocence of one charged with receiving it as a pledge. *Bolland v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 529, 151 C. C. A. 465, Ann. Cas. 1918B 520.

Evidence.—This section, taken in connection with R. S. sec. 3748 (see PUBLIC PROPERTY, BUILDINGS AND GROUNDS, vol. VI, p. 711) renders the fact that a pistol was found in the possession of one not a soldier or officer of the United States presumptive evidence that it had been pledged to him. *Bolland v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 529, 151 C. C. A. 465, Ann. Cas. 1918B 520.

Vol. VII, p. 1038, sec. 1262.

A contract surgeon is not an officer entitled to have his service as such contract surgeon counted in the computation of his longevity pay. *Yemans v. U. S.*, (1917) 52 Ct. Cl. 388.

Vol. VII, p. 1039, sec. 1265.

Pay during leave of absence.—That an officer of the army is entitled to half pay during leave of absence, granted by competent authority, is expressly sanctioned by this section. *U. S. v. Andrews*, (1916) 240 U. S. 90, 36 S. Ct. 349, 60 U. S. (L. ed.) 541.

WATERS

Vol. VII, p. 1090, sec. 2339.

Subsequent statute limiting this section.—This section, in so far as it is applicable to rights of way for electric power purposes, acquired in accordance with local laws, is superseded by the Act of May 14, 1896, ch. 179, § 2, 29 Stat. L. 120 (title PUBLIC LANDS, vol. 6, p. 510), to the extent that since the passage of the latter Act, such rights can be acquired

only by a grant from the Secretary of the Interior. *Utah Power, etc., Co. v. U. S.*, (1917) 243 U. S. 389, 37 S. Ct. 387, 61 U. S. (L. ed.) 791, *affirming* (C. C. A. 8th Cir. 1913) 209 Fed. 554, 126 C. C. A. 376. See also *U. S. v. Utah Power, etc., Co.*, (D. C. Utah 1913) 208 Fed. 821, (C. C. A. 8th Cir. 1915) 230 Fed. 328, 144 C. C. A. 470, (C. C. A. 8th Cir. 1915) 230 Fed. 343, 144 C. C. A. 485.

WHITE SLAVE TRAFFIC

1912 Supp., p. 419, sec. 2.

The commanding officer of a cruiser of the Imperial German Navy interned in the United States was subject to prosecution for a violation of this Act, such violation having been committed while the United States was at peace with Germany. *U. S. v. Thierichens*, (E. D. Pa. 1917) 243 Fed. 419.

Elements of offense—Debauchery.—“The statute is violated, if the intent is to expose the woman to such influences as will naturally and inevitably so corrupt her mind and character as to lead her to acts of sexual immorality, or if the purpose of the interstate transportation is that an already sexually corrupt

woman shall, at the place to which she is taken or induced to go, engage or continue more or less habitually in sexually immoral practices.” *Van Pelt v. U. S.*, (C. C. A. 4th Cir. 1917) 240 Fed. 346, 153 C. C. A. 272, L. R. A. 1917E 1135.

The intent of the defendant to subject the woman transported to debauchery need not be consummated by the commission of a specific act of prostitution or debauchery on the part of such woman. *U. S. v. Brand*, (S. D. N. Y. 1916) 229 Fed. 847.

Pecuniary gain.—The transportation prohibited by this Act need not be for pecuniary gain. *Caminetti v. U. S.*, (1917) 242 U. S. 470, 37 S. Ct. 192, 61

U. S. (L. ed.) 442, Ann. Cas. 1917B 1168, L. R. A. 1917F 502, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 545, 136 C. C. A. 147; (C. C. A. 8th Cir. 1916) 231 Fed. 106, 145 C. C. A. 294.

Method of transportation.—A taxi ride from a railroad station to a place of prostitution in the city and state where the station is located does not of itself involve interstate commerce so as to make a person advancing or giving money to pay the fare of a prostitute taking such ride a violator of the White Slave Traffic Act. *Heitler v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 140, 156 C. C. A. 568.

Indictment—In general.—An indictment following substantially the language of the statute is sufficient. *U. S. v. Brand*, (S. D. N. Y. 1916) 229 Fed. 847.

Purpose of transportation.—In *Van Pelt v. U. S.*, (C. C. A. 4th Cir. 1917) 240 Fed. 346, 153 C. C. A. 272, L. R. A. 1917E 1135, the indictment charged that the defendant transported a woman for the purpose of prostitution and debauchery and the facts as stated by the court were as follows: "He and the prosecuting witness were residents of Augusta county, Va. Improper sexual relations between them began when she was 14 and he 35. He had been married, but was divorced before he met the prosecutrix. Their intimacy became habitual and continued for some three years; he having intercourse with her whenever he sought it, which was on the average about twice a week. The relations between them were not known to the community in which they lived. In October, 1913, she realized that she was pregnant. She asked the defendant to secure a place to which, before her condition became such as would arouse suspicion, she could go to await confinement. He made arrangements with a midwife in Baltimore to receive her. In the latter part of January, 1914, she told him that she would like to go. They agreed that she should leave home on the 30th of the month. By arrangement he met her on the train. They spent that night at a Washington hotel, and the next at one in Baltimore. The jury could have found that these stops at the hotels were to afford opportunity for the sexual intercourse which in point of fact took place on each occasion. She bought her own ticket from her home to Washington; he from Washington to Baltimore. He gave and sent her money much in excess of the sum she paid for her ticket. She remained at the midwife's until after their child was born." There was a judgment for the government on these facts which judgment was reversed in the case above cited.

Evidence—Similar offenses.—On the question of whether the transportation was with the intent that the woman transported should engage in prostitution

or other immoral practices evidence is admissible of similar transactions had by the defendant with other women. *Kinser v. U. S.*, (C. C. A. 8th Cir. 1916) 231 Fed. 856, 146 C. C. A. 52.

Testimony of accomplices is admissible in prosecutions under the White Slave Traffic Act. *Caminetti v. U. S.*, (1917) 242 U. S. 470, 37 S. Ct. 192, 61 U. S. (L. ed.) 442, Ann. Cas. 1917B 1168, L. R. A. 1917F 502, *affirming* (C. C. A. 9th Cir. 1915) 220 Fed. 545, 136 C. C. A. 147; *Heitler v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 140, 156 C. C. A. 568.

It is not necessary to prove that the offense was committed upon the day alleged, unless a particular day be made material by the statute creating the offense. Ordinarily, proof of any day before the finding of the indictment, and within the statute of limitations, will be sufficient. *Younge v. U. S.*, (C. C. A. 4th Cir. 1917) 242 Fed. 788, 155 C. C. A. 376.

The court may impose one sentence on a conviction for two or more offenses, provided the sentence is not in excess of the maximum allowed by law for all the offenses of which the defendant has been found guilty. *Myers v. Morgan*, (C. C. A. 8th Cir. 1915) 224 Fed. 413, 139 C. C. A. 641 (*disapproving* holding to contrary in *U. S. v. Peeke*, (C. C. A. 3d Cir. 1907) 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. (N. S.) 314).

A wife may be unlawfully transported for immoral purposes by her husband in violation of this Act, and where he is prosecuted she is competent to testify against him. *Pappas v. U. S.*, (C. C. A. 9th Cir. 1917) 241 Fed. 665, 154 C. C. A. 423; *U. S. v. Bozeman*, (W. D. Wash. 1916) 236 Fed. 432.

1912 Supp., p. 420, sec. 3.

Section as containing different offenses. — "To engage in the practice of debauchery and illicit sexual relations is a different offense than the offense mentioned in the first clause of section 3. To engage in the practice of debauchery and illicit sexual relations would seem to indicate a continued course of illicit sexual relations, such as living with a woman in a state of concubinage; otherwise there would have been no necessity for using the language in the second clause of section 3, as the language used in the first clause would have been sufficient. The word 'debauchery' is a word of broad signification. It includes all kinds of excessive indulgence in sensual pleasures of any kind, such as gluttony and intemperance; the word is used in the statute with reference to immoral sexual relations." *Gillette v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 215, 149 C. C. A. 405.

The management of a house of prostitution comes within the denunciation of

this section, and a person may be convicted for inducing a woman to travel in interstate commerce from one state to another, the purpose being to have the woman "manage a house of prostitution and conduct a place where persons of opposite sexes meet and have illicit sexual intercourse." *Simpson v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 278, 157 C. C. A. 470.

Indictment.—It is sufficient that the indictment charges the offense in the language of the statute, and sets it forth with sufficient particularity to enable the defendant intelligently to prepare his defenses. It need not conform to a state statute. *Simpson v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 278, 157 C. C. A. 470.

Sufficiency of evidence.—In *Simpson v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 278, 157 C. C. A. 470, the evidence was held sufficient to support a verdict of guilty, the charge being that of inducing a woman to go from one state to another to accept the management of a house of prostitution.

1912 Supp., p. 420, sec. 4.

Knowledge by girl of purpose for which she was enticed into another state is not an element of the offense created by this

section. If the defendant put her in such a frame of mind that she wanted to go and did go, and it was the purpose on the part of the defendant that she should engage in prostitution—sexual immorality—when the destination was reached, then an offense is committed under the statute. *Pordjun v. U. S.*, (C. C. A. 6th Cir. 1916) 237 Fed. 799, 151 C. C. A. 41.

1912 Supp., p. 421, sec. 6.

Jurisdiction of offense of failing to file statement.—Where there is filed with the Commissioner General of Immigration the statement required by this paragraph, the court having jurisdiction of the offense committed is the one sitting in the district where the office of the Commissioner General is located, and not in another district where the offender lives and the alien woman is harbored. The word "file" is derived from the Latin word "filum," and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference. Filing is not complete until the document is delivered and received, and if the document is mailed from a distance this is still true. *U. S. v. Lombardo*, (1916) 241 U. S. 73, 36 S. Ct. 508, 60 U. S. (L. ed.) 897, *affirming* (W. D. Wash. 1915) 228 Fed. 980.

WITNESSES

Vol. VII, p. 1120. [*Act of March 16, 1878.*]

This Act renders any of a plurality of defendants on trial competent to testify either in his own behalf, or on behalf of any codefendant, or the government, provided only that he testifies at his own request. *Heitler v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 140, 156 C. C. A. 568.

"This statute restrains both court and counsel from comment upon the failure of the accused to testify. If he asks it, he is entitled to an affirmative instruction upon the subject, even in the absence of wrongful comment. But an instruction requested, if not in the language of the statute, should fairly express its thought, so the court may be apprised of what is desired. *Stout v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 799, 142 C. C. A. 323.

Vol. VII, p. 1124, sec. 848.

Voluntary attendance.—"It would appear from the reported decisions that practically all, if not all, the districts in the country, outside of California, allow fees to witnesses who attended vol-

untarily. The only Circuit Court of Appeals that has dealt with the question, to which the attention of the court has been called, is the case of *Marks v. Merrill Paper Co.*, [C. C. A. 7th Cir. 1913] 203 Fed. 16, 123 C. C. A. 380. In this case fees were allowed witnesses who attended from a distance beyond the reach of a subpoena." *U. S. v. Southern Pac. Co.*, (S. D. Cal. 1916) 230 Fed. 270.

Mileage.—"The other proposition brought to our attention is one which has been before the District Court in this circuit, and even the Circuit Court when the Circuit Court sat on appeal; but it never has been before us in a manner which commanded our attention. We have at times remarked that the practice in this circuit has been to reimburse for the distance actually traveled by witnesses, though in excess of 100 miles from the place of testifying. We have, however, never been compelled as an appellate tribunal to meet the question directly; and we find that finally in the present case the complaint of taxation for travel of more than 100 miles is not insisted on, so we make no ruling about it." *The Vera*, (C. C. A. 1st Cir. 1916) 229 Fed. 557, 144 C. C. A. 17.

Several causes.—In *The Vera*, (C. C. A. 1st Cir. 1916) 229 Fed. 557, 144 C. C. A. 17, two libels were tried as one cause of action, the issues being substantially the same. They were heard together at the same time and on the same testimony, the witnesses being sworn and testifying but once, and one decree was entered relating to the two. There was previously an application for a consolidation of the libels but they were in fact never consolidated, the motion for consolidation having been denied by the district judge. It was held by the Circuit Court of Appeals that "only a single fee for the attendance and travel of each witness should be allowed, to be apportioned between the two libels as the libelant may desire."

Vol. X, p. 708, sec. 858.

Criminal cases.—*The competency of witnesses in criminal trials* in the courts of the United States is not governed by the statutes of the state, but by the common law, except where Congress has made specific provisions on the subject. *U. S. v. Miller*, (W. D. Wash. 1916) 236 Fed. 798, following *Cohen v. U. S.*, (C. C. A. 9th Cir. 1914) 214 Fed. 23, 130 C. C. A. 417.

A *previous conviction of forgery* does not disqualify the person convicted from testifying on behalf of the government in a criminal trial in a federal court. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406.

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